THE CONVEYANCER AND PROPERTY LAWYER

VOL. 17, NO. 6 NOV.—DEC., 1953

CONVEYANCER'S NOTEBOOK

RENT AND PRICE CONTROL UNDER BUILDING LICENCES

As we mentioned earlier (*ante*, p. 1) the power to impose restrictions on rent and sale price on the grant of a building licence automatically expired, and all restrictions already imposed expired, on December 20. It should not be overlooked that there are other statutory powers of imposing such restrictions, *e.g.*, where an improvement grant is made or the local authority sells one of its houses, and these are unaffected.

OPTION TO RENEW LEASE AT RENT VARYING WITH THE VALUE OF THE £

Griffiths & Diggens, Ltd. v. *Great Universal Stores, Ltd.* [1953] C.P.L. 657 is a case of some interest, dealing with the construction and validity of a clause in a lease providing for renewal at a rent to be fixed by reference to an increase or decrease in the value of the £. It will be remembered that a similar clause was upheld in Australia in *Stanwell Park Hotel Co., Ltd.* v. *Leslie* (noted in Vol. 16, p. 401). In the instant case a lease for twenty-one years entered into in 1932 provided that, if so requested, the lessors would grant a further lease for a similar term. If there were an increase of 10 per cent. or more in the cost of living or a corresponding decrease in the internal purchasing power of the pound, the rent should be adjusted accordingly, any change in the cost of living to be ascertained by Board of Trade figures or other accepted methods. No such figures were issued by the Board of Trade but there was evidence to show an increase in the cost of living of 113 per cent. and that the method adopted to arrive at this calculation was adopted by the Board of Trade.

The lessors contended that the option was void for uncertainty

as the clause in question contemplated further negotiation as to the future rent in the absence of Board of Trade figures. It is hardly surprising that this contention was rejected having regard to the way the clause was framed. In any event, in view of *Nicolene, Ltd.* v. *Simmonds* [1953] 2 W.L.R. 717 (noted *ante*, p. 173), the lessors were running the risk of the escalator clause being treated as *pro non scripto*, leaving the lessees with the right to renew at the old rent. The court held the lessees to be entitled to renew at a rent equivalent to 213 per cent. of the original rent.

The Government's Housing Policy

According to the Girdwood Committee the cost of repairs in 1953 is 316 per cent. of the cost in 1939. (It may be noted that the drop in output per man-hour is down considerably on the 1939 output.) On the face of it, therefore, the Government's proposal (Houses—The Next Step, Cmd. 8996, price 9d.) to allow landlords to increase rents controlled by the Rent Restrictions Acts by a sum equal to twice the repairs allowance for rating purposes contains a measure of justice, although it is a little difficult to see what real inducement there is to say to a person that if he spends £x he can recover not more than £x. In fact the proposals are so hedged about with qualifications that it is more than doubtful whether they will achieve their avowed object of improving the general state of repair of rent-restricted property. First, the landlord has to show that the property is in good condition and that he has either spent six times the repairs allowance in the last three years or three times the allowance in the year preceding the proposed increase. Secondly, if at any time the tenant does not think the property is maintained in a proper state of repair, he can apply to the local authority for a certificate of disrepair and, if he obtains one, the landlord cannot get the increase again until he puts the property in repair. Thirdly, there is a proposed maximum rent of twice the gross value for rating purposes. This last seemingly innocuous provision will have the effect of excluding nearly every house subject to 1939 Act control. Before embarking on the qualifying expenditure the landlord should not overlook how a potential maintenance claim will work out.

There are some proposals which, although of less general application, are likely to be received more favourably. Where premises are converted into two or more self-contained dwelling-houses instead of the standard rents being fixed by apportionment, as in the past, they will be ascertained as though they had not been let before, *i.e.*, the first letting after the conversion will fix the standard

rent, subject to the right of the tenant to apply to the rent tribunal under the 1949 Act. Again, provision is to be made for an increase of rent where services are provided, the amount, in default of agreement between the landlord and the tenant, to be fixed by the rent tribunal at such amount as may in all the circumstances be just.

Apart from the Rent Restrictions Acts, numerous amendments to the Housing Acts are proposed and, in particular, the terms on which owners can obtain improvement grants (see *ante*, p. 13) are to be made more attractive.

The Weekly Law Reports

There can be little doubt that the Incorporated Council of Law Reporting has achieved an unqualified success with the *Weekly Law Reports*. We hope, however, that it was not too optimistic when it fixed the price, for it fell into the trap of underestimating the quantity of reportable cases. (The *All England Reports* fell into the same trap in 1936 and the *Times Law Reports* in 1950.) For the first time, the ordinary practitioner can be quite content with one set of general reports. He may well wonder, however, whether the *Law Reports* are worth an extra £5 5s., plus binding, even though it will now be possible for him to get them bound more cheaply. Nobody mourns the demise of the *Weekly Notes*, but it did carry out one useful function that is now missed, to publish in full certain statutory instruments of particular interest to practitioners.

Trustees' Costs—Practice Direction

In cases in which trustees are parties in their capacity as such, and in which it is appropriate that they should be indemnified as to their proper costs and expenses of the proceedings, the order as to the costs of the trustees should direct taxation of their "costs and expenses of and incident to this action [application] [matter]" without the addition of the words "as between solicitor and client." On such a direction all costs and expenses properly incurred by the trustees will be allowed by the Taxing Master.

The costs of other parties to the proceedings will, as hitherto, be ordered either (a) "to be taxed" (*i.e.*, as between party and party) or (b) "to be taxed as between solicitor and client."

By direction of the judges of the Chancery Division.

W. S. Jones,
Chief Registrar, Chancery Division.

October 27, 1953.

LICENCES TO LIVE IN HOUSES

By L. A. Sheridan, Barrister-at-Law

Glorious possibilities of many kinds have been dangled before the eyes of property lawyers by the spate of recent decisions in the High Court and Court of Appeal on the subject of licences to occupy houses. The courts themselves have been quick to exploit some of these possibilities, but many provoking questions are as yet unanswered. Writers in the journals have not been backward in searching out the questions and suggesting answers. Megarry (*a*) thought of a whole welter of them; Wade (*b*) was a bit alarmed at what he considered an improper disrespect for authority; Cheshire (*c*), viewing the developments with equanimity, bestowed general approval on them. Many more cases have appeared in the reports since the latest of these articles was written, and perhaps the stage has now been reached when it is possible to relax a little and take stock. It is not proposed that this should constitute a complete guide to licences to occupy houses, but a survey of the present state of the business with a hopeful eye cast upon prospects.

When Contractual Licences Exist

When the owner of a house allows another person to use it as his home, the question whether the resident is a tenant or a licensee may be easy to answer in most circumstances, but the difficulty is, as in other branches of law, that of devising a satisfactory principle for the testing of marginal cases. Some rules are clear. For a start, it does not matter what the parties call their agreement. What appears substantially to be a licence remains a licence even though called a tenancy (*d*), and what appears substantially to be a tenancy remains a tenancy though christened licence (*e*). It is a question of construction or fact, according as the agreement is written or not, what rights the

(*a*) "Deserted Wife's Right to Occupy the Matrimonial Home," 68 L.Q.R. 379.

(*b*) "Licences and Third Parties," 68 L.Q.R. 337.

(*c*) "New Equitable Interest in Land," 16 M.L.R. 1; see also Hargreaves. "Licensed Possessors," 69 L.Q.R. 466.

(*d*) *Clore* v. *Theatrical Properties, Ltd.* [1936] 3 All E.R. 483.

(*e*) *Facchini* v. *Bryson* [1952] 1 T.L.R. 1386.

agreement confers on the resident (*f*). In *Facchini* v. *Bryson* (*g*), Somervell L.J. said : " If, looking at the operative clauses in the agreement, one comes to the conclusion that the rights of the occupier, to use a neutral word, are those of a lessee, the parties cannot turn it into a licence by saying at the end ' this is deemed to be a licence ' ; nor can they, if the operative paragraphs show that it is merely a licence, say that it should be deemed to be a lease." Secondly, if the grantor is a person not having an estate in the land or a power of leasing, the grant must be of a licence (*h*) (though such a licence may be valueless except as giving a right of action for breach of contract against the licensor should the owner of the land not accede to the occupation). Thirdly, a tenancy includes a right of exclusive occupation : without the resident having exclusive general occupation he cannot be a tenant (*i*) ; but the converse is not true : even with exclusive occupation the resident may still be a licensee (*k*). Normally, when an owner of a house grants another the right to live there in exclusive occupation in consideration of a rent or return, the grantee is a tenant. The question thus is : what in those circumstances makes his status that of licensee ?

" Personal privilege " is the expression which has been used to denote what is granted to the resident when the agreement is held a licence. It is said that the parties intend the owner of the house to extend a personal privilege and not to grant an estate to the resident. Now, in a sense, to own an estate in land is a privilege, for no two persons can have the right of exclusive occupation of the same house at the same time. Presumably the accent is on the personalness of the privilege. One element in that will be unassignability : it is not anticipated at the date of the agreement that the rights granted will be exercisable by anyone but the immediate resident (*l*). But then there is nothing to stop a tenancy being made subject to forfeiture on assignment or parting with possession (though it is true that there are statutory restrictions on forfeiture of leases which do not apply to revocation of licences). In any case, unassignability cannot be conclusive, because the clearest

(*f*) *Torbett* v. *Faulkner* [1952] 2 T.L.R. 659.

(*g*) [1952] 1 T.L.R. 1386, 1389.

(*h*) *Torbett* v. *Faulkner* [1952] 2 T.L.R. 659; *Cobb* v. *Lane* [1952] 1 All E.R. 1199, 1202, *per* Romer L.J.

(*i*) *King* v. *David Allen & Sons, Billposting, Ltd.* [1916] 2 A.C. 54; *Clore* v. *Theatrical Properties, Ltd.* [1936] 3 All E.R. 483.

(*k*) *Marcroft Waggons, Ltd.* v. *Smith* [1951] 2 All E.R. 271; *Errington* v. *Errington* [1952] 1 K.B. 290; *Cobb* v. *Lane* [1952] 1 All E.R. 1199; *Torbett* v. *Faulkner* [1952] 2 T.L.R. 659; *Murray, Bull & Co., Ltd.* v. *Murray* [1953] 1 Q.B. 211.

(*l*) See *Errington* v. *Errington* [1952] 1 K.B. 290.

way to indicate that the parties intend the rights to be personal in that sense is for them to state that the agreement is a licence, and that, as has been held (*m*), is not enough alone to stop it being a grant of a tenancy. " Personal " must mean that there is something in the circumstances leading up to the agreement beyond the ordinary ones of someone needing a house and another person having one to let.

Errington v. *Errington* (*n*) does not help on this point as there was no rent and clearly no intention to create the relation of landlord and tenant. In *Marcroft Waggons, Ltd.* v. *Smith* (*o*), a statutory tenant died, and later his widow, who had remained in occupation, died, whereupon their daughter asked for a transfer of the tenancy to herself (*p*). The landlord refused, stating that the house was wanted for one of his employees, but said he did not wish to disturb the daughter, and accepted two weeks' rent. The daughter remained in possession, paying rent, for about six months. It was held by the Court of Appeal that the daughter was not a tenant : despite the refusal of Roxburgh J. (*q*) to call it a licence, there does not seem to be a better name for the agreement. On the other hand, in *Facchini* v. *Bryson* (*r*), the letting was by a master to his servant, obviously intended primarily to facilitate the employment. This circumstance was held insufficient to reduce the agreement from a lease to a licence : the Court of Appeal thought all the attributes of a tenancy present. The difference between the two cases seems to be that in the latter the arrangement was intended to provide a permanent home, whereas in the former the resident was allowed to live in the house for her temporary convenience at a time of personal distress. Evershed M.R. (*s*) referred to the death of her parents as " special circumstances." Perhaps it can therefore be postulated that a letting (to use a neutral word) will be a licence if, although all the other incidents of a tenancy are present, the agreement is made to relieve the temporary embarrassment of the resident while he searches for a permanent home. Where there is an act of kindness of that sort, what is conferred is a personal privilege. In *Facchini* v. *Bryson* (*t*), Denning L.J. said : " In all the cases where an occupier has been held to be a licensee there has been something in the circumstances,

(*m*) *Facchini* v. *Bryson* [1952] 1 T.L.R. 1386.
(*n*) [1952] 1 K.B. 290.
(*o*) [1951] 2 All E.R. 271.
(*p*) In Northern Ireland, she would have been entitled to the tenancy by devolution under the Rent Restriction Law (Amendment) Act, 1951, s. 5 (1) (iii).
(*q*) [1951] 2 All E.R. 277–8.
(*r*) [1952] 1 T.L.R. 1386.
(*s*) [1951] 2 All E.R. 276.
(*t*) [1952] 1 T.L.R. 1386, 1389.

such as a family arrangement, an act of friendship or generosity, or such like, to negative any intention to create a tenancy. In such circumstances it would be obviously unjust to saddle the owner with a tenancy, with all the momentous consequences that that entails nowadays, when there was no intention to create a tenancy at all. In the present case, however, there are no special circumstances." The same learned Lord Justice said in *Errington* v. *Errington* (*u*): "Parties cannot turn a tenancy into a licence merely by calling it one. But if the circumstances and the conduct of the parties show that all that was intended was that the occupier should be granted a personal privilege, with no interest in the land, he will be held to be a licensee only." That should answer in the negative Wade's question (*a*): "Will leases for indefinite periods, which are void at law, take effect in equity as licences?"

Personal Privilege and Rent Restriction

It will be observed that as most houses are within the Rent Acts, the issue of lease or licence is most material even as between the immediate parties to the agreement. On the termination of a lease, the erstwhile contractual tenant normally becomes a statutory tenant, while on the termination of a licence the ex-licensee is normally out on the street. The direct consequence of the cases just cited was to deny the benefit of the Acts to Mrs. Smith and to accord it to Mr. Bryson. It might be added that the policy of the Acts was furthered by both these decisions, and that the disability placed on parties to classify their agreement by calling it one name or another is essential if unscrupulous landlords are not to hold undue sway over the perennial superfluity of tenants. But one might be excused for jumping half out of one's skin on being confronted with the headnote to *Murray Bull & Co., Ltd.* v. *Murray* (*b*): "A licence, as opposed to a tenancy, may be inferred from the fact that the parties do not intend the Rent Acts to apply." Chary as one may be of casting aspersions on the newly deceased, it must be said (with relief) that this headnote produced by the *Times Law Reports* on its deathbed is not warranted by the facts of the case.

In *Murray Bull & Co., Ltd.* v. *Murray* (*c*), the defendant, the managing director of a company, had a contractual tenancy of a house belonging to the company. He resigned his post, one of

(*u*) [1952] 1 K.B. 290, 298. And see Glanville Williams, "Interests and Clogs," 30 Can.B.R. 1004, 1009.

(*a*) "Licences and Third Parties," 68 L.Q.R. 337, 349n.

(*b*) [1952] 2 T.L.R. 1003.

(*c*) [1953] 1 Q.B. 211; [1952] 2 T.L.R. 1003.

the terms being that he would vacate the house. He was subsequently allowed to remain in occupation as a "quarterly tenant" while he looked for somewhere else to live, "under conditions which do not establish me (Murray) as a controlled tenant," on his undertaking to give up possession whenever required by the company. McNair J. held that all that was intended to be granted was a personal privilege, and that the "tenant" was not a tenant but a licensee.

There is authority for the proposition that landlord and tenant can make arrangements for a tenancy which will not come within the Rent Acts. Thus, in *Maclay* v. *Dixon* (*d*), a prospective tenant sold his furniture to the landlord, thereby enabling the landlord to make him a furnished letting of a house, so (it was held) escaping the Acts. But it is also settled by authority that once a tenancy covered by the Rent Acts has been created, the tenant cannot contract out of his statutory protection (*e*). He can give up possession, but not contract to do so. Had the defendant Murray gone into possession for the first time under the quarterly agreement, the finding that it was a licence and therefore that he had no protection under the Rent Acts would have been in line with *Marcroft Waggons Ltd.* v. *Smith* (*f*), as the arrangement was merely to accommodate Murray while he found a home elsewhere. But he was already a contractual tenant within the Acts, and the decision of McNair J. amounts to upholding a contracting out of the defendant's right to a statutory tenancy after the dropping of the contractual one. This, it is respectfully submitted, is wrong both on the authorities and when tested by the policy of the Acts. Holding an agreement to be a licence and so denying the benefit of the Rent Acts to the resident should be confined to cases where, in the first instance, the arrangement is intended out of friendly kindness to tide the resident over a temporary difficulty.

Two arguments were put forward for the defendant in *Murray Bull & Co., Ltd.* v. *Murray* (*g*) : (1) that he was already a statutory tenant before the agreement in question was entered into; (2) that the agreement in issue was the grant of a tenancy. Both these contentions were rejected. It is submitted that a third should have been advanced and adopted : that Murray was a contractual tenant, that that tenancy was validly determined by notice, and that therefore he became a statutory tenant at exactly the same moment as

(*d*) [1944] 1 All E.R. 22.
(*e*) *Barton* v. *Fincham* [1921] 2 K.B. 291; *R.M.R. Housing Society, Ltd.* v. *Combs* [1951] 1 K.B. 486.
(*f*) [1951] 2 All E.R. 271.
(*g*) [1953] 1 Q.B. 211.

the " licence " took effect. If one cannot contract out of a statutory tenancy it is surprising that its nascence can be prevented by the landlord granting the resident a licence to stay after the end of his contractual tenancy. It is true that the authorities speak of a statutory tenancy arising when a contractual tenant " holds over." Megarry (*h*) states that a statutory tenancy comes into existence only when " the tenant is holding over from the contractual tenancy." Holding over strictly means staying in possession without the assent of the landlord. But all these authorities assume the absence of the landlord's concurrence. Apart perhaps from the *Murray Case* itself, no court has ever decided, nor writer suggested, that a landlord's assent to the tenant retaining possession prevents a statutory tenancy. Indeed, the contrary has been laid down (*i*) where a tenant alleged that the landlord's assent meant there was no holding over and that therefore his acceptance of rent gave rise to an inference that a periodic tenancy was intended. Moreover, the Act of 1920 nowhere refers to holding over. In one place (*k*) it describes a statutory tenant as " a tenant who . . . retains possession of any dwelling-house to which this Act applies . . ." (after the end of the contractual tenancy, of course).

It can be taken that when the owner accepts rent from a person in occupation of a house within the Rent Acts, those circumstances are not alone enough to cause an inference of a contractual tenancy, whether the resident has just gone into possession (*l*) or has just reached the expiration of a contractual tenancy (*m*). Thus, in the absence of other evidence of an intention to create the relation of landlord and tenant, the resident who has just gone into possession must be a licensee (*n*), while the one remaining in possession must be either a licensee or a statutory tenant. One can discount immediately the *Times Law Reports* headnote to the *Murray Case* (*o*). No court would decide that the Rent Acts did not apply to an agreement because the parties (= the landlord) did not intend them to apply. The position, however, if the

(*h*) The Rent Acts, 7th ed., pp. 172, 176. See also Woodfall, Landlord and Tenant, 24th ed., p. 294, to the same effect.

(*i*) See authorities cited by Megarry, Rent Acts, 7th ed., p. 175.

(*k*) Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 15 (1).

(*l*) *Marcroft Waggons, Ltd.* v. *Smith* [1951] 2 All E.R. 271. *Cf.* para. G, p. 275, *per* Evershed M.R.; para. E, p. 277, *per* Denning L.J. In this case the defendant had only just taken *possession*, though she had *resided* in the house for many a long year. The case would be different of a person coming to the house for the first time as possessor: it would then be harder to disprove a tenancy. Walsh, " Licenses and Tenancies for Years," 29 New York Univ. L.R. 333, defers to the old view and so does not help to solve present problems.

(*m*) *Murray Bull & Co., Ltd.* v. *Murray* [1953] 1 Q.B. 211.

(*n*) *Marcroft Waggons. Ltd.* v. *Smith* [1951] 2 All E.R. 271.

(*o*) [1952] 2 T.L.R. 1003.

Murray Case is to be followed, is that if, on the determination of a contractual tenancy, the landlord allows the resident to stay on "temporarily as a special favour," the tenant is in a worse position than if the landlord had tried to throw him out by the scruff of the neck. And devolution would be defrauded too. It would be queer if, having painstakingly given life to the statutory tenancy, going a long way towards giving solidity to the notion that even the average Englishman's home is his castle, the courts were to allow landlords to kill it by kindness.

Contractual Licences and Third Parties

It was held in *Errington* v. *Errington* (*p*) that a contractual licence (*i.e.*, one for value, or which has been acted on) to reside in a house was binding on the licensor's devisee. The licence of a deserted wife has been held binding on her husband's trustee in bankruptcy (*q*) and on a purchaser from the husband with notice of the licence (*r*). The modern doctrine as envisaged in *Errington* v. *Errington* (*s*) is that a contractual licence is binding on all successors in title of the licensor except a bona fide purchaser from him of a legal estate for value without notice of the licence. In that case, Denning L.J. said (*t*): "Neither the licensor nor anyone who claims through him can disregard the contract except a purchaser for value without notice." Cheshire (*u*) said that, provided the licence was one of which specific performance could be granted, the licensee had a right against the licensor and his successors in title other than a purchaser for value of the legal estate without notice of the contract. This Wade (*a*) has attacked as being (1) contrary to authority, and (2) unnecessary.

Taking his second point first, and assuming that the contest in *Errington* v. *Errington* (*b*) was between the licensee and the licensor's devisee, Wade's argument is that "the contract in *Errington* v. *Errington* was for a transfer of the house after the building society payments had been completed, and for a licence to occupy in the meantime. Why should not this contract, like any other specifically enforceable contract to convey, have created an equitable interest binding on the devisee?" (*c*). The answer

(*p*) [1952] 1 K.B. 290.
(*q*) *Bendall* v. *McWhirter* [1952] 2 Q.B. 466.
(*r*) *Ferris* v. *Weaven* [1952] 2 All E.R. 233.
(*s*) [1952] 1 K.B. 290.
(*t*) [1952] 1 K.B. 299.
(*u*) "New Equitable Interest in Land," 16 M.L.R. 1, 9–12.
(*a*) "Licences and Third Parties." 68 L.Q.R. 337.
(*b*) [1952] 1 K.B. 290.
(*c*) 68 L.Q.R. 350.

to this question is that the contract which was before the court was only that for the licence to occupy in the meantime. The contract to convey to the resident would not become binding on the licensor or his successors until the last instalment had been paid by the resident to the building society: until then nothing was specifically enforceable except the contract to allow occupation. A person does not get an equitable interest under an agreement to buy land unless that agreement is at least a contract. So far as the agreement in *Errington* v. *Errington* is concerned, it could be analysed thus: owner offers to defendant: if you pay off the mortgage I shall convey to you, and so long as you go on paying you may live in the house. Defendant agrees; but that does not make a contract of sale. At that stage the defendant has not accepted the owner's offer to convey, as that offer can be accepted only by paying off the mortgage. There cannot be a contract under which a vendor is obliged to sell to a purchaser who is not obliged to buy. An owner who grants an option to purchase is not bound to sell unless it is exercised (*d*). The defendant was thus in occupation under a licence and not under a contract as purchaser.

Wade's other objection is that *Errington* v. *Errington* (*e*) is in conflict with the House of Lords decision in *King* v. *David Allen & Sons, Billposting, Ltd.* (*f*) and the Court of Appeal decision in *Clore* v. *Theatrical Properties, Ltd.* (*g*). Several answers to this can be essayed. (1) Cheshire (*h*) distinguishes the *King Case* on the ground that the licensee there never started to exercise his licence. Denning L.J., in *Bendall* v. *McWhirter* (*i*), said that it was not a case of a licence but of a contract to procure the grant of a licence in the future. It may be right that a licence is binding on the licensor's successors only if enjoyment of it has been entered upon. (2) In *Clore* v. *Theatrical Properties, Ltd.*, the licensee had been exercising his rights. But that case did not concern a licence for exclusive occupation, nor did it concern a dwelling-house. It is clear from the litigation that the new interest has come into existence in consequence of the tragic prominence that finding a place to live has assumed. The billposters and the purveyors of refreshments in theatres are business people, who can

(*d*) *Cf.* 68 L.Q.R. 351–2.
(*e*) [1952] 1 K.B. 290.
(*f*) [1916] 2 A.C. 54.
(*g*) [1936] 3 All E.R. 483.
(*h*) "New Equitable Interest in Land," 16 M.L.R. 1, 12.
(*i*) [1952] 2 Q.B. 466, 482. And see Glanville Williams, "Interests and Clogs," 30 Can.B.R. 1004, 1008; Crane, "Licensees and Successors in Title of the Licensor," 16 Conv.N.S. 323, 339–40.

and should regulate their businesses to conform to the formalities of the transactions they conduct. It is quite another matter to turn a person out of his home on a technicality. And there is exclusive possession in the new licence cases, which may rest the fears of Wade (*k*): "It is for good reason that the policy of the law has preserved the frontier between contract and property. If there were no frontier, there would be no limit to the incidents of property which could be invented. But rights which can bind third parties ought to be of a limited and familiar kind; for otherwise purchasers might have to investigate an infinite variety of incumbrances, and would often have no means of knowing the real effect of some fancy or imaginative transaction to which they were strangers." If the licence for exclusive occupation of a dwelling-house is binding on third parties, that will not make purchasers peer into strange and divers places to find out just what they are buying. (3) If these are not adequate grounds of distinction, there is the explanation by Denning L.J. in *Bendall* v. *McWhirter* (*l*): the *Clore Case* "proceeds on the assumption that the licensee had no right which equity could enforce against the licensor. That assumption is no longer true" (since *Winter Garden Theatre (London), Ltd.* v. *Millennium Productions, Ltd.* (*m*)). (4) If that be not accepted either, the courts are now faced with a conflict between the cases of *Errington* and *Clore*, in which case *Young* v. *Bristol Aeroplane Co.* (*n*) leaves them free to follow either decision. There should be no doubt about their correct course. Anyway, a healthy respect for authority implies a courageous determination to search out and widen any crack in the armour of precedent which promises escape from the suffocation of antiquity. The law must move with the times. In the past, developments have been made by avoiding too nice a regard for the sanctity of what former judges said in former days, and Lord Justice Denning has already illustrated amply the room for such manoeuvre that still exists. The *Clore Case* was decided in 1936, and that is a long time ago: nearly half way back to the beginning of equity's acquaintance with licences (*o*). It takes time for changes to materialise, and it is quite common for remnants of older doctrines to survive well into the process of transmutation. The *Winter Garden Case* was a big step forward. It is true that this whole equitable reaction could have happened as soon as the

(*k*) 68 L.Q.R. 347–8. *Cf.* the answer given by Glanville Williams, 30 Can. B.R. 1009.
(*l*) [1952] 2 Q.B. 466, 483.
(*m*) [1948] A.C. 173.
(*n*) [1944] K.B. 718.
(*o*) *Hurst* v. *Picture Theatres, Ltd.* [1915] 1 K.B. 1.

Judicature Acts came into force, but it did not. It is happening now, and should not be frustrated by letting the pronouncements of predecessors overawe. The flouting of authority is not advocated, but no possibility of distinguishing an impediment should be overlooked.

No question of assignment of his rights by the licensee arises. It is not suggested that licences are necessarily unassignable, but in the cases under review it is the hypothesis of personalness of the right granted that makes it a licence at all (*p*).

Deserted Wife's Rights in the Matrimonial Home as against her Husband

It is submitted that the wife's right as against the husband to stay in the matrimonial home depends on her being in occupation of it. The problem which has usually arisen is whether a deserted wife, living in a former matrimonial home of which the legal estate is vested in the husband, can be ejected from it by him—or at least compelled to surrender possession. Where this situation arises, the answer is fairly clear : by virtue of her married status the wife is rightfully in residence. The husband seemingly cannot revoke his wife's right to stay, but can apply to the court for an order. The wife has not got an absolute right to stay, but if the husband wants her out he must satisfy the court that substantial justice will be done by ejecting her. He has not got a proprietary right to possession, nor has she a status right always to remain. Each has a claim which is to be adjudicated upon by the court, and until that adjudication takes place the status quo is the lawful state of affairs.

The Married Women's Property Act, 1882, has played a useful part in achieving this position : perhaps it was even indispensable. By section 12, " Every woman . . . shall have in her own name against all persons whomsoever, including her husband, the same civil remedies . . . for the protection and security of her own property, as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort." (*i.e.*, a husband cannot bring an ordinary action for possession against his wife). By section 17, " In any question between husband and wife as to the title to or possession of property either party . . . may apply " to the court, and the judge " may make such order with respect to the property in dispute . . .

(*p*) *Cf. Errington* v. *Errington* [1952] 1 K.B. 290, 293, *per* Somervell L.J.; 298, *per* Denning L.J.; *Cobb* v. *Lane* [1952] 1 All E.R. 1199, 1202, *per* Denning L.J.

as he thinks fit . . ." (*i.e.*, this is the only procedure whereby a husband can bring an action for a tort against his wife, apart from certain special cases not relevant here).

It has been held that the making of an order under section 17 is discretionary. In *Hutchinson* v. *Hutchinson* (*q*), Denning J. refused a husband a possession order against a wife from whom he was judicially separated. In *Stewart* v. *Stewart* (*r*), the discretion was exercised by the approval of the Court of Appeal in favour of a husband who was proceeding against the wife for divorce on the ground of her adultery. In *Middleton* v. *Baldock* (*s*), Evershed M.R. left open the question whether the husband could revoke the wife's authority to remain in the home otherwise than by proceeding under section 17. Denning L.J., however, said (*t*) that even had the wife remained against her husband's will he could not have turned her out, adding : " In a case of the present kind, where the husband has deserted his wife and she has nowhere else to go, no court would order her out " (under section 17). In *Cristel* v. *Cristel* (*u*) an order was made under section 17 by consent. In *Wabe* v. *Taylor* (*a*), the wife took in a lodger and had a child by him, and the Court of Appeal left open the question whether the husband could have revoked the right of occupation on that ground. In *Lee* v. *Lee* (*b*), the offensive was taken by the deserted wife, who applied to the county court under section 17, for an order restraining her husband from taking any step by sale to interfere with the wife's and children's residence. This order having been made, and declared to last until the provision by the husband of suitable alternative accommodation, an appeal was dismissed. In *Bendall* v. *McWhirter* (*c*), Denning L.J. said that a wife had a right as against her husband to stay in the matrimonial home unless and until an order was made against her.

That seems to be what it amounts to :—a husband owning the legal estate in the matrimonial home deserts his wife and leaves her in occupation of it. She has a right to stay in this sense, that the husband cannot eject her; he can only apply to the court for an exercise of the discretion under section 17. The court should naturally take into account the respective financial states of husband and wife, the availability of suitable alternative accommodation,

(*q*) [1947] 2 All E.R. 792.
(*r*) [1948] 1 K.B. 507.
(*s*) [1950] 1 K.B. 657.
(*t*) [1950] 1 K.B. 668.
(*u*) [1951] 2 All E.R. 574.
(*a*) [1952] 2 Q.B. 735.
(*b*) [1952] 1 All E.R. 1299.
(*c*) [1952] 2 Q.B. 466, 475–6.

maintenance allowances (if any), the position of children of the marriage, and so on. It is submitted that the adultery in *Wabe* v. *Taylor* (*d*) did not provide the husband with capacity to revoke the wife's right of occupation by his own decision, but provided a circumstance to be taken into account by the court in his favour should he bring an application under section 17. It is submitted that the only way for a husband to get his wife out of the matrimonial home is by applying to the court to exercise its discretion (*e*). A fair enough terminology would be to say that the wife has a licence so long as either the husband makes no application or there is in force under section 17 an exercise of the discretion in favour of the wife. Megarry, with respect, is not right in comparing (*f*) this to the operation of the Courts (Emergency Powers) Act, 1943, for a husband never—even before 1882—had a right to sue his wife in tort.

Further, it is suggested that the wife's right lasts only so long as she remains in occupation. Should she leave, she has no claim (except under section 17) to get back again, but has her other remedies of pledging her husband's credit for necessaries, applying for maintenance, and petitioning for divorce (along with its accompanying financial benefits). This would be the state of affairs also where, instead of being deserted, she is put out of the matrimonial home, or is compelled to leave by her husband's cruelty, sodomy, or anything else she cannot bear to live with. Once she was out of occupation, the wife would not find the court willing to reinstate her under section 17. But if she is in occupation and her husband has deserted her, she may have not only a right to stay, but even a right to exclude her husband. In *Silverstone* v. *Silverstone* (*g*), pending the hearing of a petition for judicial separation brought by a wife on the grounds of her husband's cruelty and adultery, Pearce J. granted the wife, who was in occupation, an injunction to restrain the husband from entering the matrimonial home, of which he owned the legal estate. The learned judge said (*h*) that the wife had a right to be in the matrimonial home pending the trial, although she may have no "definite legal or equitable interest in the premises . . ." Otherwise the husband might bring pressure to bear to have the petition withdrawn.

(*d*) [1952] 2 Q.B. 735.
(*e*) See *Middleton* v. *Baldock* [1950] 1 K.B. 657, 668, *per* Denning L.J.: *Bendall* v. *McWhirter* [1952] 2 Q.B. 466, 475–6, *per* Denning L.J. *Tunstall* v. *Tunstall* [1953] 1 W.L.R. 770 does not affect this question.
(*f*) "Deserted Wife's Right to Occupy Matrimonial Home," 68 L.Q.R. 379, 380.
(*g*) [1953] 2 W.L.R. 513; [1953] P. 174.
(*h*) [1953] 2 W.L.R. 514.

As between husband and wife, then, it is contended that the cases establish the following propositions :—(1) A deserted wife in occupation of a matrimonial home has a right to stay there, though it belong to the husband, in this sense : that a husband has no procedure available to him to get his wife out but by applying to the court under section 17 of the Married Women's Property Act, 1882. On such an application, the court has an absolute (judicial) discretion, and must take all the circumstances into account, *i.e.*, the applicant's title is not an open sesame. (2) The wife's right to stay is obviously not assignable. Denning L.J. has said (*i*) : " The authority is, of course, purely personal to her. She alone can exercise it. She cannot assign it. It does not give her any legal interest in the land. She may, perhaps, sublet some of the rooms so as to help keep herself; but even then, she does so, not out of any legal interest of her own in the land but on the presumed authority of her husband. Her possession is not always exclusive. . . . But whether her possession is exclusive or not, there can be no doubt that she is not a tenant of her husband. She has only a personal privilege with no legal interest in the land and she is therefore only a licensee. . . ." Once she parts with possession, the husband can recover his property by an ordinary action—he no longer needs to invoke section 17. (3) The only way in which, apart from her voluntarily giving up possession or being made to do so under section 17, the wife's possession can be ended is by her ceasing to be wife. A divorce puts an end to her right (*k*). Thus, in *Vaughan* v. *Vaughan* (*l*), a wife was deserted by her husband, who owned the matrimonial home, she continuing to occupy it. When the husband left, he told the wife she could always live in the house. The wife subsequently divorced the husband, who now brought proceedings for possession of the house. The Court of Appeal found for the plaintiff, Evershed M.R., with whom Denning and Romer L.JJ. agreed, saying (*m*) that whatever the defendant's rights may have been as wife, she had lost them by the divorce; any rights she now had must be contractual; in this case, the husband had no intention to be contractually bound : the express licence was gratuitous and therefore revocable by the plaintiff at his will.

(*i*) *Bendall* v. *McWhirter* [1952] 2 Q.B. 466, 477. *Cf. Errington* v. *Errington* [1952] 1 K.B. 290, 293; *per* Somervell L.J.; 298, *per* Denning L.J.

(*k*) *Robson* v. *Headland* (1948) 64 T.L.R. 596; *Vaughan* v. *Vaughan* [1953] 1 W.L.R. 236.

(*l*) [1953] 1 W.L.R. 236.

(*m*) [1953] 1 W.L.R. 237–40.

Deserted Wife v. *Husband's Landlord*

It is well-established (*n*) that a deserted wife's right to stay in a matrimonial home applies just as much against a husband-lessee as against one who is a freehold owner. Very often, though, the person seeking to get the wife out is not her husband but the landlord. The position appears fairly obvious : in order to eject the wife, the landlord must show that he is entitled to possession, and so long as the husband is lessee the landlord is not entitled to possession. Thus, if the husband has a term of ten years, and deserts his wife half way through the term, for those remaining five years the wife can resist an action by the landlord, and the position thereafter depends on whether the premises are within the Rent Acts. Similarly, presumably, if the tenancy is quarterly, and is of premises outside the Rent Acts, the landlord can get rid of the wife by giving a quarter's notice to the husband and then bringing ordinary proceedings for possession against her as a trespasser. Equally, in those circumstances, the husband could deprive his wife of protection against the landlord by giving notice or surrendering (*nn*). But most of the cases have been concerned with husbands who were statutory tenants.

What has happened is that a statutory tenant has deserted his wife, and the landlord has then tried (and failed) to get possession by showing that the statutory tenancy ceased when the husband left the premises. A statutory tenancy ends when the tenant abandons (*i.e.*, gives up possession of) the premises or when the court makes a possession order on one of the grounds specified in the Rent Acts. The Court of Appeal has on several occasions held that the landlord cannot eject the deserted wife. The *ratio decidendi* of these cases is that a statutory tenant remains in possession (whether he likes it or not) so long as his deserted wife lives there. While the rent is paid, and no ground for possession against the husband prescribed by the Rent Acts is proved by the landlord, the wife can go on living there.

In *Brown* v. *Draper* (*o*), the husband was weekly tenant of premises within the Rent Acts. He deserted his wife, who, with their children, remained in occupation of the house and used the husband's furniture in it, the husband paying the rent. The landlord then gave the husband notice to quit, whereupon he stopped paying the rent but neither purported to revoke his wife's leave

(*n*) *Old Gate Estates, Ltd.* v. *Alexander* [1950] 1 K.B. 311 is an example of a Court of Appeal decision to that effect.

(*nn*) This contention is implicitly supported, though by no means clinched, by *Meah* v. *Loames* [1953] C.P.L. 422.

(*o*) [1944] K.B. 309.

to reside in the house nor removed his furniture. The landlord sued the wife for trespass, and the husband, who was not a party, gave evidence that he had no interest in the house. The Court of Appeal held that the husband was still in possession of the house through his wife, and that the landlord ought to have proceeded for an order under the Rent Acts. The husband could not divest himself of his statutory tenancy merely by saying he did not want it. The landlord was thus unable to eject the husband's licensee without getting a possession order against the husband. In *Middleton* v. *Baldock* (*p*), the husband was a statutory tenant who deserted his wife, she remaining in the matrimonial home together with some of her husband's furniture. The landlord sought possession, which the husband offered him. The Court of Appeal held that the husband could not give up possession as against his wife, and the landlord failed. Evershed M.R. (*q*) said that the wife was entitled to be in possession as against her husband. Thus, the husband could not give up possession to the landlord, and he remained statutory tenant. Hence, the landlord could get possession only by showing one of the grounds specified by the Rent Acts. In *Wabe* v. *Taylor* (*r*), the husband was tenant of premises within the Rent Acts. He deserted his wife, who remained in occupation and paid the rent. She took in a lodger and had a child by him. The landlord subsequently sold to the plaintiff, who knew of the circumstances, and who accepted the rent for a time, but who later brought proceedings for possession. The husband took no part in the affair, not appearing to the action. The Court of Appeal said that probably the wife's matrimonial offence would have entitled the husband to revoke her licence—it has already been submitted that this is wrong and that it merely gave him infinitely more favourable odds on his chances under section 17—but, so long as he did not, he was in occupation through her, and there was no ground under the Rent Acts for a possession order. (Acceptance of rent by the plaintiff was another ground for the decision.) It is not clear whether the furniture belonged to the husband and, though it probably did, the decision is authority for the view that residence by the wife in the house, without the husband's children or furniture, is enough to conclude that the husband remains in possession. In *Bendall* v. *McWhirter* (*s*), Denning L.J. said : " This right as against the landlord is a very special right on her part. She has to assert the right in her husband's name, but the husband cannot prevent

(*p*) [1950] 1 K.B. 657.
(*q*) [1950] 1 K.B. 661–3.
(*r*) [1952] 2 Q.B. 735.
(*s*) [1952] 2 Q.B. 466, 476.

her from exercising it. Even if he gives her notice to go, or purports to surrender the tenancy or to submit to judgment, nevertheless she is entitled to stay . . ." (*t*). In other words, so long as the deserted wife remains in residence the husband is in possession; so long as the husband is in possession there is a statutory tenancy; and so long as there is a statutory tenancy the landlord can get possession only on one of the grounds specified in the Rent Acts.

The one stumbling block to this analysis, as Megarry points out (*u*), is the Court of Appeal decision in *Taylor* v. *McHale* (*a*). The tenant had gone away, leaving his wife, but taking the furniture, paying the rent due, and giving up the keys to the landlord. No rent had been paid by anyone since, and the landlord now sued the wife as a trespasser. Scott L.J. is reported as having said that "If a man left his wife in possession without definitely giving up possession of the premises the presumption was that she continued there on his behalf and he continued in possession. But that had no application if he said he was giving up possession." The learned Lord Justice was joined by Asquith L.J. and Jenkins J. in holding that possession had in fact been given up completely. There can be no denying the conflict of authority, and *Young* v. *Bristol Aeroplane Co.* (*b*) again requires a choice, in which it is to be hoped that the later view will prevail. It may be added that that would make no difference in the particular circumstances of *Taylor* v. *McHale*: a holding that the statutory tenancy subsisted would merely require the landlord to proceed under the Rent Acts against the husband and wife for possession for non-payment of rent, instead of against the wife alone for a trespass. Furthermore, this case makes no inroad on the principle that so long as the husband's interest lasts the deserted wife's licence continues. In the county courts, it seems, *Taylor* v. *McHale* lingers on. According to *Current Law* (*ba*), cited with diffidence (*bb*)—though no one would regard a county court case as authoritative wherever reported—a view similar to that of the Court of Appeal in *Taylor*

(*t*) Presumably the inability of the husband to surrender or submit to judgment exists only in cases of statutory tenancies. He cannot do these things because they involve giving up possession, which involves getting the wife out first—*i.e.*, *before* surrendering. But a contractual tenancy outside the Rent Acts can be given up without giving up possession.

(*u*) 68 L.Q.R. 381.

(*a*) [1948] Estates Gazette Digest 299; [1948] Estates Gazette 371.

(*b*) [1944] K.B. 718. *Cf.* Glanville Williams, "Interests and Clogs," 30 Can.B.R. 1004, 1010.

(*ba*) [1953] 7 C.L. Case note 230.

(*bb*) Because of what Hallett J. said in *Rivoli Hats, Ltd.* v. *Gooch* [1953] 1 W.L.R. 1190, 1191–2.

v. *McHale* was taken by Shove J. in a case of *Denby* v. *Atkin* on July 14, 1953.

Difficulty arises over the question of paying the rent. So long as the deserted wife pays the rent she is all right; similarly, so long as the husband pays the rent the landlord cannot disturb the wife's possession (unless there is some ground, other than non-payment of rent, for possession against the husband under the Rent Acts). But although the husband presumably remains liable for the rent (*c*), and the landlord can sue him for it, the landlord could instead of suing for rent claim possession under the Rent Acts for non-payment. The wife would appear to have no answer to such a claim, as there does not seem to be any way in which she could force her husband to pay. She can, of course, get a maintenance order against her husband, and her safe course is to pay the rent herself if her husband does not do so.

The Divisional Court has decided, in *R.* v. *Twickenham Rent Tribunal* (*d*), that a deserted wife could not apply under the Landlord and Tenant (Rent Control) Act, 1949, s. 1, for a reduction in the rent of a matrimonial home of which the husband was tenant. The husband, of course, could apply, but in that case he did not want to. So far as the decision is based on the restriction of such applications by the Act to the "tenant" in the strict sense it is intelligible, but some parts of the judgments go further than that. Lord Goddard said (*e*): "If a person takes a house and agrees to pay the rent, he would normally consider that he ought to pay the agreed rent. In this case, the husband has never complained about the rent he agreed to pay. He has not asked, and does not wish to ask the tribunal to decide that the landlord is charging an excessive rent. Why should the wife, because she chooses to remain in the house, be entitled to say to the tribunal that the rent which the husband agreed to pay, did pay and has always been willing to pay while he lived in the flat, was excessive? Why should she be entitled to ask the tribunal to break a contract which the husband made with the landlord and which he has never sought to repudiate?" This question can be answered. First, every tenant who applies for a reduction has agreed the rent in the first place, and no tenant applies for a reduction in rent he does not have to pay. Secondly, the wife is the person who must pay the rent if she is to be secure. Thirdly, to say that the husband refused to apply, and to imply that the wife should enlist the

(*c*) Lord Goddard left this point open in *R.* v. *Twickenham Rent Tribunal* [1953] 3 W.L.R. 517, 519.
(*d*) [1953] 3 W.L.R. 517.
(*e*) [1953] 3 W.L.R. 520.

husband's co-operation if she wishes a reduction, is to ignore the hostility between husband and wife which gives rise to the deserted wife's status in the matrimonial home. A malicious husband could refuse to apply, however outrageous the rent became in the light of changes in the national economy or local society. Perhaps he could even agree with the landlord that the rent should be more! That, with respect, would make a mockery of the already dubious statement by Donovan J. (*f*): "The decisions in question are directed to preserving a deserted wife's right to remain in the matrimonial home, and it is not necessary to the preservation of that right that the wife should have a further right to apply for a reduction of rent." It might well be necessary in the sense that the wife might be unable to go on living there if the rent were not reduced. And after all, the tribunal will not reduce the rent if it is not too much.

Licence to Occupy as Interest in Land

Wade (*g*) and Megarry (*h*) assume that the decisions holding licences binding on certain successors in title of the licensor have constituted a new equitable interest in land. Cheshire (*i*) entitles his article on the subject "A New Equitable Interest in Land." Glanville Williams asks (*k*): "Would it not be better to admit frankly that this right of the wife with the new measure of protection that has been given to it is an interest in property?" Kahn-Freund suggests (*l*) dire consequences from not knowing one way or the other.

The judges concerned have been quite definite on the subject. Lord Justice Denning, in a lecture (*m*), implied that the wife in *Thompson* v. *Earthy* (*n*) had no equitable interest. On the Bench, the same learned judge has expressed that opinion several times. In *Errington* v. *Errington* (*o*), he said: "The difference between a tenancy and a licence is, therefore, that, in a tenancy, an interest passes in the land, whereas, in a licence, it does not." Later in the same case, in a passage already quoted, he referred (*p*) to a licensee as a person "granted a personal privilege, with no interest in the land. . . ." In *Cobb* v. *Lane* (*q*), Denning L.J. said: "The

(*f*) [1953] 3 W.L.R. 521.
(*g*) "Licences and Third Parties," 68 L.Q.R. 337.
(*h*) "Deserted Wife's Right to Occupy the Matrimonial Home," 68 L.Q.R. 379.
(*i*) 16 M.L.R. 1.
(*k*) "Interests and Clogs," 30 Can.B.R. 1004, 1012.
(*l*) "Matrimonial Home—Recent Cases," 16 M.L.R. 215.
(*m*) "Need for a New Equity," 5 Current Legal Problems 1, 4.
(*n*) [1951] 2 K.B. 596.
(*o*) [1952] 1 K.B. 290, 296.
(*p*) [1952] 1 K.B. 298.
(*q*) [1952] 1 All E.R. 1199, 1202.

question in all these cases is one of intention : Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land? It seems to me that the judge has so found. The defendant had only a personal privilege with no interest in the land, which he could assign or sub-let, and he could not part with the possession to another." In *Bendall* v. *McWhirter* (*r*), in a passage already quoted, Denning L.J. said that a deserted wife had " no legal interest in the land." Later in the same case (*s*), he said that she had " a clog or fetter, like a lien, which is not an interest in property but only a personal right to retain possession . . ., but nevertheless it is, of course, effective against the owner and his assigns." In the same case (*t*), Romer L.J. said that the wife " has no legal or equitable interest in the home which she continues to occupy and in that respect is in no better position than any other licensee." And he said (*u*) her right was a " clog or fetter."

Now, there is no general agreement on a precise definition of " interest in land " or " proprietary right." One wants to know whether a licence is one in order to ascertain its attributes, or for purposes of classification, which is a matter of pedagogical taste and need not be considered here. As to the attributes : Can the licence to occupy exist? Is it assignable? Is the licensee a tenant for life within the Settled Land Act? Are the licensor's successors in title bound? Does a licence require registration? Perhaps if some answer is attempted to each of these questions, each person will add them up to his own satisfaction and decide whether he regards the licence as an interest in land.

There can be no doubt that occupational licences exist. The difficulty suggested by Crane (*a*) is that if they are equitable interests in land (there is no question of their being legal) they must comply with the Law of Property Act, 1925, s. 4 (1) proviso : " . . . an equitable interest in land shall only be capable of being validly created in any case in which an equivalent equitable interest in property real or personal could have been validly created " before 1926. Crane suggests one answer : that *Lord Strathcona S.S. Co.* v. *Dominion Coal Co.* (*b*) shows that such an interest could exist in personalty before 1926. Another answer is to suggest

(*r*) [1952] 2 Q.B. 466, 477.
(*s*) [1952] 2 Q.B. 480.
(*t*) [1952] 2 Q.B. 485.
(*u*) [1952] 2 Q.B. 486.
(*a*) " Licensees and Successors in Title of the Licensor," 16 Conv.N.S. 323, 342.
(*b*) [1926] A.C. 108.

that " created " means created by the parties, not by the courts—*i.e.*, the new precedents are theoretically declaratory. Furthermore, in so far as the deserted wife's right rests on section 12 of the Married Women's Property Act, 1882, the courts have merely decided that such a right was created in 1882 (at the latest).

It has already been shown that neither contractual nor deserted wives' licences to occupy are assignable. This invites consideration of section 4 (2) of the Law of Property Act, 1925—" All rights and interests in land may be disposed of. . . ." That suggests that the occupational licence is not a right or interest in land. Glanville Williams' submission (*c*) that there are exceptions to the general words demanding assignability is not really borne out by his example of the beneficiary's interest under a discretionary trust (for there the owner can claim nothing specific, and it would thus be possible to argue that he had no interest in property until paid—after which he could assign what he got—even while maintaining that a licence was an interest in land); and a life interest determinable on alienation is also a special case (an inalienable interest in the ordinary sense does not automatically determine on purported alienation).

Obviously, a deserted wife's licence does not cause a settlement under the Settled Land Act, 1925, s. 1 (1), for it is not created by an instrument. Kahn-Freund thought (*d*) it possible that an occupational licensee whose right was created in writing might be a tenant for life under a settlement. This might be said to depend on whether a licensee has an interest in land. It is submitted that, for this purpose, the licensee has no such interest. Section 4 (2) of the Act requires the legal estate to be vested in the tenant for life, and matters are now getting out of hand. In some cases a person has been held a licensee—the humble holder of a personal privilege—so as to be denied the benefit of the Rent Acts. It would be odd if, deprived of security of tenure, he could announce to the licensor that they would go down together, and could sell the fee simple, leaving the licensor to live on the comfort of the purchase-money. This is too horrible to contemplate.

Now the other attributes remain to be considered.

Deserted Wife v. *Husband's Successors in Title*

In *Bendall* v. *McWhirter* (*e*), a deserted wife's licence was held binding on the husband's trustee in bankruptcy. The deserted

(*c*) " Interests and Clogs," 30 Can.B.R. 1004, 1012n.

(*d*) " Matrimonial Home—Recent Cases," 16 M.L.R. 215, 216. Romer L.J. had raised the point in *Vaughan* v. *Vaughan* [1953] 1 All E.R. 209, 213.

(*e*) [1952] 2 Q.B. 466.

wife and the children of the marriage were living in the husband's freehold house, which was subject to a mortgage, when it vested in the husband's trustee in bankruptcy, who then tried to get possession for the purpose of a sale. Denning L.J. referred (*f*) to the wife's right, as against her husband, to stay in the matrimonial home unless and until an order is made against her under section 17, and said (*g*) the right was like that of a contractual licensee. This he described as not being a right of property, but effective against the owner and his assigns once the licensee has entered into occupation. He said it was a negative covenant binding on the conscience of successors as under *Tulk* v. *Moxhay* (*h*), and was enforceable against all except a bona fide purchaser for value without notice (*i*). Accordingly, the wife's interest bound the trustee in bankruptcy. Romer L.J. agreed with the result, but confined himself to the notion that a trustee in bankruptcy takes no more than his debtor had.

Whether the trustee in bankruptcy is in even as strong a position as the husband is doubtful. The husband can at least apply under section 17 of the Married Women's Property Act, 1882. In *Bendall* v. *McWhirter* (*k*), Denning L.J. thought any successor in title could use section 17 in the husband's name, and that the husband could be compelled to lend his name. The learned judge thought this *à fortiori* so in the case of a trustee in bankruptcy on account of sections 22 (3) and 38 (b) of the Bankruptcy Act, 1914 (*l*). Alternatively, he said, the trustee could apply under section 105 (1) of that Act (*m*). Further, he continued, even if the successor in title can bring an ordinary action, the court has a discretion whether to order possession, "for that is the only way in which effect can

(*f*) [1952] 2 Q.B. 475–6.
(*g*) [1952] 2 Q.B. 478–85.
(*h*) (1848) 2 Ph. 774.
(*i*) Throughout this section, "notice" is referred to. Consideration of whether the licensee's right should rest on registration, and not notice, is the subject-matter of the next section.
(*k*) [1952] 2 Q.B. 483–4.
(*l*) s. 22 (3):—The debtor "shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors. . . ." S. 38:—"The property of the bankrupt divisible amongst his creditors . . . shall comprise . . . (b) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge. . . ."
(*m*) s. 105 (1):—"Subject to the provisions of this Act, every court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. . . ."

be given to the wife's right as now established. Any other view would lead to great injustice. It would mean that a guilty husband could transfer the house into the name of his new mistress and then get her to evict his innocent lawful wife from the matrimonial home. No civilised community could tolerate such a cynical disregard of the married state. Equity demands that the successor in title should be in no better position than the husband." Romer L.J. thought (*n*) that the trustee in bankruptcy, despite sections 22 (3) and 38 (b) of the Bankruptcy Act, 1914, could not use section 17 of the Married Women's Property Act, 1882, because there would be no "question between husband and wife." But he agreed that the dispute could be resolved under section 105 (1) of the Bankruptcy Act.

Thompson v. *Earthy* (*o*) is the only reported authority clearly on the position of a deserted wife as against a purchaser from the husband. There, Roxburgh J. held that even a purchaser with notice of the situation, took free from the wife's right. In *Errington* v. *Errington* (*p*), Denning L.J. said that *Thompson* v. *Earthy* was wrong, and he reiterated that view in "Need for a New Equity" (*q*). But *Errington* v. *Errington* was concerned with a contractual licence, and it was held binding on a devisee, not a purchaser. In *Bendall* v. *McWhirter* (*r*), however, Denning L.J. said that the deserted wife's right was like that of a contractual licensee, which would appear to be available against all but a bona fide purchaser for value without notice of it. The analogy seems apt, and probably a deserted wife's right is just as extensive. Certainly the purchaser with notice appears to have less strength in his claim to be freed from the wife's occupation than the trustee in bankruptcy who was held bound by it in *Bendall* v. *McWhirter*. In *Ferris* v. *Weaven* (*s*), a husband deserted his wife who continued to live in the matrimonial home, in which the legal estate belonged to the husband, by his express permission. Later, the husband sold the house for a nominal amount to his brother-in-law, who had notice of the arrangement with the wife, with a view to his (the husband's) recovering possession. It was held that the brother-in-law could not get possession. Jones J. evidently based his decision on the express permission, for he said (*t*): ". . . the wife was a licensee with a contractual right to remain in this house which arose

(*n*) [1952] 2 Q.B. 488–9.
(*o*) [1951] 2 K.B. 596.
(*p*) [1952] 1 K.B. 290, 299.
(*q*) 5 Current Legal Problems 1, 4.
(*r*) [1952] 2 Q.B. 466, 478–85.
(*s*) [1952] 2 All E.R. 233.
(*t*) [1952] 2 All E.R. 236–7.

from the arrangement between her and her husband in 1941 and acted on by them from that time until, at any rate, June or July, 1951, being in force when the sale to the plaintiff was completed and the writ in this action was issued." Apparently *Thompson* v. *Earthy* (*u*) was distinguished on this ground. It may be added that when *Thompson* v. *Earthy* was decided, it may not have been realised that contractual licences could be binding on purchasers with notice from the licensor. It is submitted that the deserted wife's right is now binding on all but the purchaser of a legal estate without notice of her interest (*a*). *Bramwell* v. *Bramwell* (*b*) does not conflict with this submission, being a decision on a particular maintenance order. It would be alarming if a husband could not eject his deserted wife but could sell for full value to someone who could, thus providing himself with funds to buy a wifeless house.

This view is supported by a dictum of Denning L.J. in *Lee* v. *Lee* (*c*): "If the husband sells the house over his wife's head and a purchaser buys it in good faith for value without notice of any right or interest in the wife, the purchaser can eject the wife. To forestall that danger in the present case the judge made an order restraining the husband from disposing of the house to the prejudice of his wife." He then said (*d*) that if someone purchased "with notice of that right, or, at any rate, with notice of the order, he could not, in disregard of it, eject the wife. . . ." For all his insistence on the contractual aspect of that case, Jones J. in *Ferris* v. *Weaven* (*e*) seemed to think the position here contended for followed from *Bendall* v. *McWhirter* (*f*). He said: "Counsel for the plaintiff referred me to the judgment of Romer L.J. (*g*), and submitted that the court was considering particularly the position of a trustee in bankruptcy, but it seems to me that the effect of the decision is to support the contention of the wife in the present action." The effect of *Bendall* v. *McWhirter* on *Thompson* v. *Earthy* really all depends, as Kahn-Freund pointed out (*h*), on whether you adopt the majority view as propounded by Romer L.J. (directed to the special position of the trustee in bankruptcy) or that of Denning L.J. (directed to successors in title

(*u*) [1951] 2 K.B. 596.
(*a*) *Cf.* Crane, "Licensees and Successors in Title of the Licensor," 16 Conv.N.S. 323, 330.
(*b*) [1942] 1 K.B. 370. *Cf. Pargeter* v. *Pargeter* [1946] 1 All E.R. 570.
(*c*) [1952] 1 All E.R. 1299, 1301.
(*d*) [1952] 1 All E.R. 1301–2.
(*e*) [1952] 2 All E.R. 233, 236.
(*f*) [1952] 2 Q.B. 466.
(*g*) In *Bendall* v. *McWhirter*.
(*h*) "Matrimonial Home—Recent Cases," 16 M.L.R. 215.

generally). *Ferris* v. *Weaven* plus Denning L.J. in *Bendall* v. *McWhirter* might be thought to have dealt a knockout blow to *Thompson* v. *Earthy*. But then came Jenkins L.J., giving the judgment of the Court of Appeal in *Bradley-Hole* v. *Cusen* (*i*), who adopted *Bendall* v. *McWhirter* as to the trustee in bankruptcy standing in the shoes of the debtor, and applied the conception so as to bind the trustee in bankruptcy by a personal right a tenant had (under the Rent Acts, to deduct excessive payments of rent from future payments) against his bankrupt landlord before the bankruptcy. He did not think the right would be binding on an "ordinary assignee of the house." This, says Kahn-Freund (*k*), has "knocked the bottom out of the interpretation given to *Bendall* v. *McWhirter* by Jones J. in *Ferris* v. *Weaven*. Implicitly it has re-established *Thompson* v. *Earthy*." But the pendulum keeps on swinging, and now there is the (so far) unreported decision by Hallett J. in *Savage* v. *Hubble*, for knowledge of which one is indebted to *The Manchester Guardian* (see [1953] C.P.L. 416) of June 11, this year. Apparently a deserted wife was living in the matrimonial home belonging to the husband. The plaintiff bought it for full value with notice of all the circumstances, and failed in his proceedings for possession. *Thompson* v. *Earthy* is very groggy.

The final question in this respect is what the purchaser who is bound can do. The husband could at least apply under section 17 of the Married Women's Property Act, 1882, to get the wife out, but it is not clear that the purchaser can do this. *The Manchester Guardian* does not state whether Hallett J. had any views on the subject in *Savage* v. *Hubble* (*kk*). Roxburgh J. in *Thompson* v. *Earthy* (*l*) thought the purchaser could not use section 17 : that was one of the grounds for his decision. He said that there was nothing to stop the purchaser suing the wife; if he could not, he would be in a worse position than the husband, as the purchaser could not use section 17. A similar result follows from the view of Romer L.J. (the majority opinion) in *Bendall* v. *McWhirter* (*m*). Perhaps, then, the purchaser with notice is snookered : he has no ordinary action because the vendor had none, and he has no right under section 17 because that is confined to the vendor. The freehold safely sold or devised or mortgaged, that would mean, and the

(*i*) [1953] 2 W.L.R. 193, 198–9.
(*k*) 16 M.L.R. 220.
(*kk*) The judgment as reported in [1953] C.P.L. 416, 417, does not raise the point either.
(*l*) [1951] 2 K.B. 596, 599.
(*m*) [1952] 2 Q.B. 466, 488–9.

deserted wife could be as promiscuous as she pleased without fear of ejection. This looks as though it needs legislation to extend section 17 to the husband's successors in title. Only in the view of Denning L.J. in *Bendall* v. *McWhirter* (*n*) is the position of the purchaser adequate. According to that learned judge, either the purchaser can apply under section 17 in the name of the husband (who can be compelled to lend his name), or similar questions to those arising under section 17 can be settled (by the exercise of a similar discretion) on a purchaser's ordinary action for possession. On this basis, which is attractive, a purchaser could eject the wife on any occasion on which, but for the sale, the husband could have done so. Presumably a mortgagee is in the same position as a purchaser, and a legatee or devisee always takes subject to the widow's right.

Notice and Registration

So far, in referring to the effect of licences as against a successor in title of the licensor, the word " notice " has been used for the sake of simplicity. However, old notions of notice have been largely retired, and registration often occupies its position in lieu. Wade asked (*o*) whether a contractual licence was registrable, and the question was also put by Megarry (*p*), Glanville Williams (*q*) and Crane (*r*), and with regard to the deserted wife's licence too. The only answer that has yet come from the Bench is that by Denning L.J. in *Bendall* v. *McWhirter* (*s*): " In some contractual licences over land (not amounting to occupation) there may be some nice questions whether the licence is an equitable easement which must be registered in order to be binding on successors : see an illuminating note on ' Equitable Easements ' by Mr. Geoffrey Cross in *The Bell Yard* (1935) No. 15, at p. 18 ; but no such questions arise where the licensee is in possession or actual occupation of the land, because that itself is sufficient notice of his rights : see section 14 of the Law of Property Act, 1925, section 70 (1) (g) of the Land Registration Act, 1925, and *Lewisham Borough Council* v. *Maloney* (*t*). Statutory tenants (who have only a personal privilege) and requisitioning authorities (who have only possession) do not have to register their interests ; nor does a contractual licensee so long as he is in possession or actual occupation. His interest is,

(*n*) [1952] 2 Q.B. 466, 483–4.
(*o*) 68 L.Q.R. 349n.
(*p*) 68 L.Q.R. 384–5.
(*q*) 30 Can.B.R. 1013.
(*r*) 16 Conv.N.S. 343–4.
(*s*) [1952] 2 Q.B. 466, 483.
(*t*) [1948] 1 K.B. 50.

therefore, binding on a trustee in bankruptcy, even though the trustee does rank as a purchaser for value : see section 43 of the Land Registration Act, 1925."

With regard to land registered under the Land Registration Act, 1925, no registration of a contractual licence to occupy or that of a deserted wife is either required or possible, for under section 70 (1) (g) " the rights of every person in actual occupation of the land . . ., save where inquiry is made of such person and the rights are not disclosed," are overriding interests. There is nothing in the Act to require overriding interests to be legal, nor requiring them to be estates or interests in land at all (*u*). " Whether or not an overriding interest is equitable it will bind all registered transactions, and the equitable doctrine of notice is excluded, since a registered disposition is expressed to be subject to overriding interests and no mention of notice is made; indeed, any mention would be inconsistent with the scheme of the Acts " (*a*). There may be a notice on the register of an overriding interest, but that does not affect its validity or effect one way or the other. As Potter wrote (*b*) : " In fact the position of licensees under the Act appears hardly to have been considered despite the importance, apart from the Land Registration Act, of the rights conferred by licence where it is given for valuable consideration and is irrevocable." Thus the licence to occupy registered land is binding on any successor in title of the owner granting the licence whether or not the successor has notice of it, unless he inquired of the licensee who did not disclose the right.

Wade suggested (*c*) that a contractual licence over unregistered land might be registrable as an equitable easement or restrictive covenant under the Land Charges Act, 1925, s. 10 (1), Class D. Glanville Williams advocated (*d*) registration as equitable easements. The only question is whether occupational licences are registrable. It is quite clear, as Megarry pointed out (*e*), that under section 13 (2) of the Land Charges Act, 1925, and section 199 (1) of the Law of Property Act, 1925, a class of successor in title protected by the Acts is not bound by an unregistered Class D land charge even if he has notice of it. The argument in favour of registration is that this would synchronise smoothly with the scheme of the 1925 legislation, while the principal argument against

(*u*) And see Crane, 16 Conv.N.S. 345–6.
(*a*) Potter, Principles of Registered Land, p. 45.
(*b*) *Op. cit.*, p. 52.
(*c*) 68 L.Q.R. 349n.
(*d*) 30 Can.B.R. 1013.
(*e*) 68 L.Q.R. 385.

it is that no category of land charge listed by the Land Charges Act comprises licences to occupy.

It is possible, of course, for words in Acts of Parliament to have meanings they have never had in any other context. It is submitted, however, that there is nothing in the Land Charges Act, 1925, to indicate that " equitable easement " has anything but its usual meaning, and that therefore it does not apply to a right of occupation. (The same applies to " restrictive covenant.") It is not suggested that possession is an alternative to registration, but that there is nothing in section 10 of the Land Charges Act, 1925, to require or allow registration of a right to possession unless it be under a mortgage or estate contract (*f*). The view that a right to occupy a house is not an equitable easement is nowhere authoritatively propounded. It is, however, bolstered up by the judgment of the Court of Appeal, given by Somervell L.J. in *Lewisham Borough Council* v. *Maloney* (*g*).

That case was an unsuccessful attempt to have a requisitioning of a house held void as against a purchaser for non-registration under the Land Charges Act, 1925, s. 10 (1) (D) (iii)—equitable easements. After stating that it would be difficult to frame the entry on the register, Somervell L.J. said (*h*) : " With these general observations, we turn to the interpretation of the material part of section 10 (1) of the Act. No doubt the words ' right . . . over or affecting land ' without a context might, and, indeed, would, have a very wide meaning—a meaning capable of covering rights which could not be described in ordinary language as ' charges or obligations.' Thus, it might be said that a person entitled to the benefit of a contract to create a legal estate had a ' right . . . over or affecting land ' ; but it is clear from class C (iv) (*i*) that such a right is not intended to fall within class D (iii). We note also the separate treatment of local land charges in section 15, their exclusion from class B, and the absence of any such exclusion from class D (iii), to which we have already referred. The words in question, therefore, on which counsel relies for the defendant, in our view have in their context a restricted meaning : they follow the word ' easement,' and the kind of charge and obligation comprised in the whole phrase is in the Act to be referred to as an ' equitable easement.'

" An Act of Parliament, if clear words are used, may provide that a word or words of narrow import may comprise matters which

(*f*) And see Crane, 16 Conv.N.S. 344–5, 346.
(*g*) [1948] 1 K.B. 50.
(*h*) [1948] 1 K.B. 57–8.
(*i*) Estate contracts.

would normally be regarded as outside their scope, and in this connexion the judge referred to what was said by Scrutton L.J. in *Taff Vale Ry.* v. *Cardiff Ry.* (*k*). We fully accept this principle, but there is, in our judgment, sufficient in the context of the material words in section 10 (1) of the Act of 1925 to prevent their extension to cover the possessory rights of a competent authority under the Defence Regulations, and to prevent those words from having a significance wider than appears to us, in the context, to be their natural meaning.

" Mr. Danckwerts, for the borough council, submitted that the words are apt, and only apt, to cover incorporeal rights or rights similar in their general incidents to incorporeal rights. The argument is, we think, attractive, but we desire to avoid deciding anything beyond the particular point before us. We think it, therefore, sufficient for us to say that, in our judgment, it would, in the light of the whole context in which the words are used, be an unnatural extension of their meaning to construe them as including such statutory rights of possession and user of the land possessed as are conferred by reg. 51."

The submission therefore is that an occupational licence over unregistered land is not registrable as a restrictive covenant or equitable easement or as anything else under the Land Charges Act, 1925, and that it is binding on all successors in title of the licensor except a purchaser for value of the legal estate without notice of the circumstances. This view is supported by what Denning L.J. said in *Bendall* v. *McWhirter* (*l*), and by *Ferris* v. *Weaven* (*m*) and *Savage* v. *Hubble* (*n*), where a contractual licence to occupy and a deserted wife's licence respectively were held binding on purchasers with notice of them without mention of registration.

Cross, in the article (*o*) mentioned by Denning L.J., said it was doubtful whether " equitable easement " covered all licences to do something on the land of another or only those which, if created by legal forms, would be incorporeal hereditaments. He said that registration of both classes was desirable, particularly of licences in gross. But Cross does not seem to have thought that a licence to occupy came in the same category : this he would have regarded as a sort of equitable lease, and the arguments in favour of requiring registration of other licences would not apply to it, as it is readily discoverable.

(*k*) [1917] 1 Ch. 299, 317.
(*l*) [1952] 2 Q.B. 466, 483.
(*m*) [1952] 2 All E.R. 233.
(*n*) *The Manchester Guardian*, June 11, 1953; [1953] C.P.L. 416.
(*o*) " Note on ' Equitable Easements,' " 15 Bell Yard 18.

Deserted and Undeserted Wives

All the cases on the wife's right to be in the matrimonial home have concerned deserted wives, but it cannot be taken as settled that no other condition of wife has any right. There are two aspects to this problem : (1) Does the deserted wife's right arise on the desertion or at some other time? This can be important from several points of view, but particularly from that of a mortgagee of the husband's estate. (2) Has a wife who is never deserted any right? The answers vary according to which of three possible analyses of the decided cases is adopted.

First, there is the view that the right is simply that of a deserted wife, arising out of the desertion. This is based on *Bendall* v. *McWhirter* (*p*). In that case, counsel for the appellant said (*q*) of the wife : " So long as she lives with her husband she is a co-adventurer; but once she is cast out she has special rights and is entitled to have them protected." Denning L.J. said (*r*) her authority to be in the matrimonial home " flows from the status of marriage, coupled with the fact of separation owing to the husband's misconduct." And he said (*s*) it had a close resemblance to the right to pledge her husband's credit for necessaries. This would mean that only a mortgagee taking after the desertion could be bound (*ss*). Megarry said (*t*) that " the needs of the wife may be just as great whether the marriage preceded the mortgage or the mortgage preceded the marriage." Whether you take this as it stands, or read " desertion " for " marriage," it is no more than an acknowledgment that the law of property is not designed to nullify twists of fate : there is no planning for needs about it. The needs of the wife may be just as great if she is deserted in furnished lodgings on a weekly basis, if her husband was a tenant at will, if he leaves her in a dilapidated house that collapses about her ears, or if he turns out to have been a bigamist. A more substantial objection to this view, as Megarry (*u*) and Glanville Williams (*a*) point out, is that a mortgagee taking from the husband and finding the wife in sole occupation will not know whether the wife has any

(*p*) [1952] 2 Q.B. 466. (*q*) [1952] 2 Q.B. 474.
(*r*) [1952] 2 Q.B. 477. (*s*) [1952] 2 Q.B. 476.
(*ss*) During the progress of this article through the press, support was forthcoming for this view. In *Lloyds Bank, Ltd.* v. *Oliver's Trustee* [1953] 1 W.L.R. 1460, a husband mortgaged the matrimonial home in 1945, deserted his wife in 1952, and shortly afterwards went bankrupt. Upjohn J. held that the mortgagees could evict the wife, notwithstanding that she had obtained an order of the court under the Married Women's Property Act, 1882, s. 17, allowing her and the children to live in the flat until the husband supplied suitable alternative accommodation. The rights of the wife against the husband arose out of the desertion, and could not operate so as to diminish a right against the husband created before the desertion. The case does not, however, exclude the possibility that the wife's right may arise out of separation not involving desertion by the husband.
(*t*) 68 L.Q.R. 382–3. (*u*) 68 L.Q.R. 382–4. (*a*) 30 Can.B.R. 1014.

right at all until he has investigated the questions of desertion, constructive desertion, condonation, and what have you.

Secondly, there is the opposite extreme: any wife has an irrevocable licence to stay in any matrimonial home. This, it is submitted (but without authority), is neither good law nor good sense. It is not good law because the whole basis of the wife's right is occupation, and she is not in occupation so long as her husband is. The whole basis of the wife's right against third parties is her right against the husband, and she has none (except access) while they are living together. It is not good sense from the domestic point of view because it supposes hostility between the spouses; nor from the commercial point of view because it makes mortgages of matrimonial homes too difficult for building societies or banks to bother with.

Thirdly, there is the suggestion by Kahn-Freund (*b*) that the wife's right might exist in all cases of separation in fact, whether or not arising out of desertion. This is submitted to be the correct view: whenever the wife is in occupation of the husband's matrimonial home, she cannot be got out by the husband except by an order of the court under section 17 of the Married Women's Property Act, 1882. Whether her occupation results from her husband's desertion or some other cause merely affects the chances one way or the other of her husband getting that order. This view would mean in unregistered conveyancing that whenever a person taking a mortgage from a husband found the wife in occupation of the house (this is easily found out), he would be fixed with notice that she could not be ejected except under section 17. In registered land, she would have a corresponding overriding interest. Of course, the mortgagee would not know the chances of success under section 17 until he had investigated all the circumstances, but he might well require the husband to make an application as a condition precedent to granting the loan. In any case, as Crane says (*c*), the problem facing the mortgagee "is not essentially different from that facing him with regard to legal easements and profits *à prendre*. Similar inquiries and requisitions should be made."

Husbands, Children, and Cousins Twice Removed

Another problem is whether the right applies vice versa. Is a deserted husband in occupation of the wife's matrimonial home licensed to stay there? He might be in a sticky position, especially if his wife is the breadwinner. One can imagine the husband of

(*b*) 16 M.L.R. 215.
(*c*) 16 Conv.N.S. 347.

an actress or Member of Parliament who has given up a comfortable little clerkly salary in order to be free to do the household chores. It again depends on what analysis of the decided cases is adopted.

First, if the deserted wife's right arises out of the matrimonial status and is analogous to her other rights, that leaves no way open to accord a similar right to the husband. He has no right to be maintained by his wife, nor can he pledge her credit.

Secondly, if the wife's right rests on her immunity under section 12 of the Married Women's Property Act, 1882, from suit by her husband in tort there is no corresponding basis for a right in the husband. The wife can bring an ordinary action for possession against her husband (*d*).

Lastly, it may be that the deserted husband will be able to squeeze himself through a little loophole in *Bendall* v. *McWhirter* (*e*). According to Denning L.J. in that case (*f*), a purchaser might be able to sue the deserted wife, and the court could decide in the same way in which it could in proceedings under section 17. It may be that if the wife sues the husband the court has a similar discretion. This view grows stronger in the light of the fact that, although the husband is not immune under section 12, section 17 is still there. Suppose the husband gets in first with an application under section 17 before the wife sues : can it be doubted that the court has jurisdiction to award possession to the husband and to grant him an injunction restraining the wife from selling? Presumably the husband could answer any action for possession by applying under section 17. And if the wife just sells, is the purchaser not as much bound by the husband's right to apply as a purchaser in the deserted wife cases is bound by the inability of the husband to do anything else? No confident answers can be given, but if the courts are in the mood for interpreting the wife's protection extensively, let us have at the same time fair shares for husbands : the way to achieve it is open.

The position with regard to children is more difficult both on account of general considerations and because there is already equivocal authority. In *Robson* v. *Headland* (*g*), where an ex-wife was held not to be her ex-husband's licensee, the child of the marriage had to get out too. In *Murcutt* v. *Murcutt* (*h*), grown-up children were put out by their father although he allowed the wife to stay. In neither of these cases were the children of tender

(*d*) *cf.* Kahn-Freund, 16 M.L.R. 215; George, "Disputes over the Matrimonial Home," 16 Conv.N.S. 27, 34.
(*e*) [1952] 2 Q.B. 466.
(*f*) [1952] 2 Q.B. 483–4.
(*g*) (1948) 64 T.L.R. 596.
(*h*) [1952] P. 266. And see Kahn-Freund, 16 M.L.R. 215–6.

years, and in neither were they abandoned. It is conceived that it might be different where a widow or widower walked out of the home, leaving children too young to fend for themselves. The parent has a duty to maintain children, he surely cannot evict them in those circumstances although they are not immune in tort, and they probably have a licence similar to that of the deserted wife. The situation is very unlikely, as abandonment of children is quickly a police matter and will consequently be in all probability too short-lived for any conveyancing difficulties to arise out of it. But an eye will have to be kept open for the prolific and wealthy widower who abandons children in strategic sites all over the country as a way of keeping open a large number of statutory tenancies!

And there the matter must stop. It is too easy to go on from children to all persons *in loco filii*, to invalid parents, to dependent relatives generally, to all who were living with the owner when he left the house. It is hard on them all to lose their home, and few people like moving even with somewhere to go. But the law cannot go on scattering clogs and fetters indefinitely: there would soon be few unlicensed premises left! It is submitted that the wife and husband and their infant children are the only candidates for licences to occupy by operation of law.

Conclusion

The wider subject of licences generally raises many problems that have not been mentioned here. Even within the limited scope of licences to occupy houses there are many problems that would have expanded this article to an encyclopedia. Some concern conveyancers, *e.g.*, how far *Wheeldon* v. *Burrows* (*i*) affects a licensee. Some concern the law of torts, *e.g.*, can a licensee sue in nuisance?

Naturally, a new development of such magnitude as this in the law causes a deal of hard thinking and bewilderment. But an attitude of resentment at the doubting of old authorities is not much help. And the notion that new rights should not be created because they give rise to conveyancing difficulties is deplorable. The law was not better suited to twentieth century requirements as it stood before the Statute *in Consimili Casu*. Of course, legislation would have been better than litigation, as Megarry said (*k*). It generally would; but there is no legislation, yet there is the situation (*l*). It is not such a shame that something has been left to the lawyers to work out.

(*i*) (1879) 12 Ch.D. 31.
(*k*) 68 L.Q.R. 389.
(*l*) *cf.* Glanville Williams, 30 Can.B.R. 1014.

LIABILITY TO REPAIR AS BETWEEN LANDLORD AND TENANT IN THE ABSENCE OF EXPRESS AGREEMENT

By W. A. West, LL.B., Barrister-at-Law
and Henry Summerfield, B.A., Barrister-at-Law

Liability of Landlord

"There is no law against letting a tumble-down house" was almost true when Erle C.J. said it in 1863 (*a*), but such a statement today would require considerable qualification. Apart from the landlord's liabilities in the realm of tort and under the extensive powers conferred on local authorities by the Public Health and Housing Acts, a large proportion of lettings without express repairing covenants come within the provisions of section 2 of the Housing Act, 1936.

1. Housing Act, 1936, s. 2

By virtue of this section a landlord is liable to make and keep reasonably fit for human habitation any house or part thereof which is let for human habitation at a rent not exceeding £40 a year in London and £26 elsewhere (unless the letting is for at least three years certain and is subject to a covenant by the tenant to make the premises reasonably fit for human habitation) (*b*). The rent which determines whether a letting subjects the landlord to this liability is the sum the tenant has agreed to pay the landlord each year, by whatever period that sum is calculated and whether or not it includes rates and other outgoings which the landlord has agreed to pay (*c*).

When a defect rendering the house not reasonably fit for human habitation is patent, and so known to the tenant, the Housing Act does not render the landlord liable to remedy the defect until he has notice of it (*d*). He has such notice if his attention has been called to it in general terms, as, for example, "steps need attention" (*e*). The position where the defect is latent is uncertain (*f*).

(*a*) *Robbins* v. *Jones* (1863) 15 C.B.(N.S.) 221, at p. 240.
(*b*) Housing Act, 1936, s. 2 (1).
(*c*) *Rousou* v. *Photi* [1940] 2 K.B. 379.
(*d*) *McCarrick* v. *Liverpool Corporation* [1947] A.C. 219.
(*e*) *Griffin* v. *Pillet* [1926] 1 K.B. 17.
(*f*) See *per* Lord Uthwatt in *McCarrick* v. *Liverpool Corporation*, at p. 233. In *Summers* v. *Salford Corporation* [1943] A.C. 283, each member of the House of Lords then sitting expressly reserved for further consideration the question

The standard of repair necessary to render premises reasonably fit for human habitation, and so satisfy the requirements of the Housing Act, "is a humble standard. It is only required that the place must be decently fit for human beings to live in," which is far less than the standard of repair which is implied by such words as "keeping premises in good and tenantable repair, state and condition, fair wear and tear only excepted" (*g*). But a house is not reasonably fit for human habitation even if the tenant can live in it if its state of repair "is such that by ordinary user damage may naturally be caused to life or limb or injury to health" (*h*), for example, if the only window in a bedroom is so jammed that it cannot be moved without danger and the ventilation of the room is thereby impeded (*i*), if steps leading from one room to another are so defective as to be dangerous (*k*), if the street door lock is so defective that opening the door is a dangerous operation (*l*), if a window sash is broken (*m*), or if a substantial portion of the ceiling falls down (*n*).

The tenant's remedy for a failure by the landlord to keep a house in the required state of repair is an action for damages (*o*).

2. Rent Restrictions Acts

For the purpose of the increase in rent permitted by section 2 of the Rent and Mortgage Interest (Restrictions) Act, 1920, the landlord is deemed to be responsible for any repairs for which the tenant is under no express liability, but this provision does not impose on the landlord any statutory liability to the tenant to repair (*p*), nor does the provision (*q*), which makes this increase irrecoverable (unless the condition is due to the tenant's neglect or default or breach of express agreement) if the local authority certifies the house is not in a reasonable state of repair.

---

of the correctness of the Court of Appeal decision, in *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131, that a landlord is not liable for *any* defect in the absence of notice. *Fisher* v. *Walters* [1926] 1 K.B 17, was criticised but not expressly overruled in *McCarrick* v. *Liverpool Corporation*.

(*g*) *Per* Salter J. in *Jones* v. *Geen* [1925] 1 K.B. 659, at pp. 668–9.

(*h*) *Per* Lords Atkin, Russell of Killowen and Wright in *Summers* v. *Salford Corporation* at pp. 289, 291 and 294, approving the statement of Atkin L.J. in *Morgan* v. *Liverpool Corporation* at p. 145.

(*i*) *Summers* v. *Salford Corporation*, *supra*.

(*k*) *McCarrick* v. *Liverpool Corporation*, *supra*.

(*l*) *Fihelibon* v. *Westminster City Council* (1952) 102 L.J. 52, [1952] C.L.Y. 1563.

(*m*) *Schnell* v. *Chamberlain* (1911) unreported but cited in Adkin on Dilapidations, 3rd ed., at p. 157; see also *per* Lords Atkin and Russell of Killowen in *Summers* v. *Salford Corporation*, at pp. 289 and 291.

(*n*) *Fisher* v. *Walters* [1926] 2 K.B. 315.

(*o*) *Walker* v. *Hobbs & Co.* (1889) 23 Q.B.D. 458.

(*p*) *Morgan* v. *Liverpool Corporation*, *supra*; *cf. Mint* v. *Good* [1950] 2 All E.R. 1159, as to the landlord's liability to third parties in nuisance.

(*q*) Act of 1923, s. 5.

3. Control of Part Retained by Landlord

Even at common law certain liabilities to their tenants to repair are cast upon some landlords. A landlord who retains possession of part of a building and lets part is liable under his implied covenant for quiet enjoyment to exercise reasonable care and vigilance to prevent the part retained making the part let unsafe (*r*). So a landlord who employs an independent contractor to do demolition work above the tenant's premises is liable to the tenant if he fails to take precautions to prevent the work damaging the part let (*s*), but where the tenant has asked for a water pipe retained by the landlord to be attended to, a landlord who takes reasonable care to employ a competent contractor is not liable for damage done by water overflowing into the tenant's premises by reason of the contractor's defective work (*t*). A landlord is, however, responsible for damage done by water overflowing by reason of negligence of his servant in doing something (*e.g.*, washing his hands) incidental to his employment (*u*). Where the only access to the demised premises is by a staircase retained by the landlord there is an implied obligation upon the landlord to the tenant to take reasonable care to keep the staircase safe (*a*). This is greater than the obligation to avoid traps which is owed to licensees, and a tenant may therefore recover damages for injury sustained by reason of disrepair creating a danger of which he knows (*b*). The implied contractual obligation of a landlord who retains possession of the roof over the demised premises is no more than to use reasonable care to examine the roofs and gutters and keep them in repair (*c*), and to remedy defects of which he has notice within a reasonable time (*d*). Accordingly in the absence of negligence a landlord is not responsible for damage done on the tenant's premises by water escaping from the roofs or gutters (*e*).

(*r*) *Carstairs* v. *Taylor* (1871) L.R. 6 Ex. 277.

(*s*) *Odell* v. *Cleveland House, Ltd.* (1910) 26 T.L.R. 410.

(*t*) *Blake* v. *Woolf* [1898] 2 Q.B. 426.

(*u*) *Ruddiman* v. *Smith* (1889) 60 L.T. 708.

(*a*) *Devine* v. *London Housing Society* [1950] 2 All E.R. 1173, 1177; *Miller* v. *Hancock* [1893] 2 Q.B. 177; *Hargroves, Aronson & Co.* v. *Hartopp* [1905] 1 K.B. 472; and *Dunster* v. *Hollis* [1918] 2 K.B. 795, as explained in *Fairman* v. *Perpetual Investment Building Society* [1923] A.C. 74, at pp. 78–83, 90–1, 92–4, 97–8.

(*b*) *Dunster* v. *Hollis*, *supra*.

(*c*) *Carstairs* v. *Taylor* (1871) L.R. 6 Ex. 217; *Kiddle* v. *City Business Properties Ltd.* [1942] 1 K.B. 269.

(*d*) *Hargroves* v. *Hartopp* [1905] 1 K.B. 472; *Cockburn* v. *Smith* [1924] 2 K.B. 119.

(*e*) *Carstairs* v. *Taylor*, *supra*; *Kiddle* v. *City Business Properties, Ltd.*, *supra*. The decision to the contrary in *Hart* v. *Rogers* [1916] 1 K.B. 646, cannot be considered good law in view of the comments made in *Dunster* v. *Hollis*, *supra*, and *Cockburn* v. *Smith*, *supra*.

4. Furnished House

Finally, there is implied in the letting of a furnished house a condition that it is habitable and fit for occupation at the time the tenancy is to begin. A tenant is therefore entitled to refuse to take a house and to leave it without paying rent or to sue for damages if it is infested with bugs (*f*), rendered uninhabitable by bad drains (*g*), or unsafe because recently inhabited by persons suffering from reputedly infectious diseases, such as pulmonary tuberculosis (*h*), scarlet fever (*i*), or measles (*k*). The landlord, however, has no duty to keep the premises in repair (*l*) or to notify the tenant of outbreaks of infectious disease in the premises which occur after the letting (*m*).

5. General

If a landlord enters and voluntarily does repairs he is not liable for any damage caused to the tenant by the negligence of apparently competent workmen employed by him (*n*).

Apart from the liabilities referred to above a landlord who has given no express covenants has no liability whatsoever to his tenant for the condition of the demised premises either at the commencement of or during the tenancy (*o*).

Liability of Tenant

The liability of a tenant who has given no express covenants to maintain or repair premises varies according to the duration of his tenancy.

1. Tenant at will or sufferance

A tenant at will has no liability whatever (*p*), but if he commits voluntary waste he determines his tenancy and may become liable in trespass (*p*). Any positive act causing injury (*q*)

(*f*) *Smith* v. *Marrable* (1843) 11 M. & W. 5; *Campbell* v. *Wenlock* (1866) 4 F. & F. 716.

(*g*) *Wilson* v. *Finch Hatton* (1877) 2 Ex.D. 336.

(*h*) *Collins* v. *Hopkins* [1923] 2 K.B. 617, but it is unlikely that this decision would be followed in the light of present medical knowledge.

(*i*) *Chester* v. *Powell* (1885) 52 L.T. 722.

(*k*) *Bird* v. *Greville* (1884) Cab. & El. 317.

(*l*) *Maclean* v. *Currie* (1884) Cab. & El. 361.

(*m*) *Sarson* v. *Roberts* [1895] 2 Q.B. 395.

(*n*) *Malone* v. *Laskey* [1907] 2 K.B. 141; *Ball* v. *L. C. C.* [1949] 1 All E.R. 1056

(*o*) *Bottomley* v. *Bannister* [1932] 1 K.B. 458; *Lane* v. *Cox* [1897] 1 Q.B. 415; *Robbins* v. *Jones* (1863) 15 C.B.(N.S.) 221, 240; *Gott* v. *Gandy* (1853) 2 E. & B. 845; *Cavalier* v. *Pope* [1906] A.C. 428.

(*p*) *Countess of Shrewsbury's Case* (1600) 5 Co.Rep. 13a; *Harnett* v. *Maitland* (1847) 16 M. & W. 257; *Westropp* v. *Elligott* (1884) 9 App.Cas. 815; *Whitham* v. *Kershaw* (1886) 16 Q.B.D. 613.

(*q*) An act causes injury only if it either diminishes the value of the estate, or increases or imposes a burden upon it, or impairs the evidence of title: *per*

to the land or premises or altering the nature of the thing demised (*r*) constitutes voluntary waste, which may therefore include :

pulling down or substantially altering buildings (*s*), altering their structure, destroying or removing fixtures other than those which the tenant has the right to remove (*t*);

felling (other than for use as timber with which to repair the demised premises or fences) (*u*) timber trees (*i.e.*, oak, ash and elm of twenty years' growth or more throughout the country, and such other trees in any locality as by local custom are considered to be timber trees), orchards, or trees planted or left standing for shelter or ornament (*a*);

opening mines or quarries (*b*), taking clay for brick-making (*c*);

changing the course of husbandry (*d*), or converting a field into a rubbish heap (*r*).

A tenant may, however, take dead wood.

Thus, if a ruinous house is pulled down, or a floor known to be weak so overloaded that it gives way, voluntary waste is committed, but it is not so if the house falls of its own accord or the floor collapses under use which is reasonable in the circumstances (*e*).

"Any use is reasonable, provided it is for a purpose for which the property was intended to be used, and provided the mode and extent of the user was apparently proper, having regard to the nature of the property and to what the tenant knew of it, and to what as an ordinary business man he ought to have known of it." (*f*). It is for the tenant to prove that damage to the demised property is due to causes for which he is not responsible.

A tenant at sufferance is liable for voluntary waste (*g*).

Denman C.J. in *Doe* d. *Grubb* v. *Burlington* (1833) 5 B. & Ad. 507. But old cases on impairing evidence of title are often not applicable to modern conditions, under which evidence of title no longer depends mainly upon the memory of witnesses: *per* Lord Blackburn in *Doherty* v. *Allman* (1878) 3 App.Cas. 709.

(*r*) *West Ham Central Charity Board* v. *East London Waterworks Co.* [1900] 1 Ch. 624.

(*s*) *Hayes* v. *Allen* (1592) Cro.Eliz. 234; *Smyth* v. *Carter* (1853) 18 Beav. 78, which cases must now be read subject to the remarks of Lord Blackburn in *Doherty* v. *Allman* (1878) 3 App.Cas. 709: see note (*q*) above; *Marsden* v. *Edward Heyes, Ltd.* [1927] 2 K.B. 1, *per*, Scrutton L.J., at p. 7.

(*t*) *Elwes* v. *Maw* (1802) 3 East 38; *Kimpton* v. *Eve* (1813) 2 Ves. & B. 349; *Edge* v. *Pemberton* (1844)) 12 M. & W. 187.

(*u*) *Anon.* Plowden Queries 9; *Herlakenden's Case* (1589) 4 Co.Rep. 62a.

(*a*) See 20 Halsbury (2nd ed.), pp. 112 *et seq.*, and cases there cited.

(*b*) *Saunders Case* (1599) 56 Rep. 12a; *Elias* v. *Griffith* (1878) 8 Ch.D. 521.

(*c*) *Attersoll* v. *Stevens* (1808) 1 Taunt. 183.

(*d*) *Simmons* v. *Norton* (1831) 7 Bing 640; *Darcy* v. *Askwith* (1618) Hob. 234; but these cases must be read subject to the remarks of Lord Blackburn in *Doherty* v. *Allman* (1878) 3 App.Cas. 709: see note (*q*) above.

(*e*) *Edwards and Halinder's Case* (1594) 2 Leon. 93; *Manchester Bonded Warehouse Co.* v. *Carr* (1880) 5 C.P.D. 507.

(*f*) *Manchester etc.* v. *Carr*, at p 512.

(*g*) *West* v. *Treude* (1630) Cro.Car. 187.

2. Tenant from Year to Year

A tenant from year to year, or a quarterly, monthly or weekly tenant, is liable for voluntary waste (*h*). He must also use the demised premises in a husbandlike (*i*), which means tenant-like (*j*), manner, and may not completely change their character, as by changing a dwelling-house into a shop by removing staircases, windows, doors, fireplaces and internal fixtures and fittings (*j*). Such a tenant is liable to replace, or pay the cost of replacing, the staircase, windows, doors, and fireplaces he has destroyed (*j*), and the fixtures which he has unlawfully (*i*) removed (*j*); and the cost of repairing or replacing doors and windows he has broken (*k*), and of disposing of rubbish which he has left on the premises (*l*); but he is not liable to replace parts of the buildings such as the roof (*k*), window sashes (*k*), locks (*m*), latches (*m*), or door panels (*m*), which were worn out when the tenancy commenced or have since become so through fair wear and tear (*n*).

It has also been said that a tenant from year to year must keep the demised premises wind and water-tight (*o*) so far as this can be done without substantial (*p*) or general repairs (*i*), but this has been doubted in the recent case of *Warren* v. *Keen* (*q*) in which the expression " wind and water-tight " was criticised by Denning L.J. at page 706 as being of doubtful value. In any event, the courts have refused to define this obligation exactly (*j*), and there is no reported case of a tenant's being expressly held liable for breach of it. Any such obligation, if it exists, would be subject to an exception for fair wear and tear (*qq*).

3. Other Periodic Tenancies

The liability of a weekly tenant was recently considered in *Warren* v. *Keen* (*q*), in which case the tenancy had become statutory (" but nothing turns on that "—*per* Somervell L.J., at p. 703).

(*h*) Under the Statutes of Marlbridge (1267) 52 Hen. 3, c. 23, and of Gloucester (1277) 6 Edw. 1 c. 5; *Harnett* v. *Maitland* (1847) 16 M. & W. 257; *Bacon* v. *Smith* (1841) 1 Q.B. 345.

(*i*) *Horsefall* v. *Mather* (1815) Holt 7.

(*j*) *Marsden* v. *Edward Heyes, Ltd.* [1927] 2 K.B. 1: see *per* Bankes L.J., at p. 6, and Atkin L.J., at p 8.

(*k*) *Ferguson* v. —— (1797) 2 Esp. 590, *per* Lord Kenyon C.J.

(*l*) *Goodman* v. *Rollinson* [1951] W.N. 118.

(*m*) *Auworth* v. *Johnson* (1832) 5 C. & P. 239.

(*n*) *Torriano* v. *Young* (1833) 6 C. & P. 8.

(*o*) *Wedd* v. *Porter* [1916] 2 K.B. 91; *Auworth* v. *Johnson* (1832) 5 C. & P. 239.

(*p*) *Leach* v. *Thomas* (1835) 7 C. & P. 327.

(*q*) [1953] 3 W.L.R. 702.

(*qq*) *Warren* v. *Keen* (above) *per* Somervell and Romer L.JJ.

The particulars of disrepair were "(a) First floor front room (Large). Walls—plaster damp—stained below window opening. (b) First floor front room (Small). Walls—plaster damp—stained and perished below window opening. (c) External. Front wall—rendering cracked and broken in parts. Front floor window opening—sills not weatherproof, joints and paintwork decayed. (d) Leak in hot water boiler."

The court held that a weekly tenant was under no implied obligation to keep the premises "wind and water tight." Somervell and Romer L.JJ. held that in any event as the disrepair was due to fair wear and tear it could not amount to a breach of this obligation. Denning L.J. expressed the opinion that a weekly tenant is not liable for permissive waste and that his only duty is to use the premises in a tenant-like manner. He added: "But what does 'to use the premises in a tenant-like manner' mean? It can, I think, best be shown by some illustrations. The tenant must take proper care of the place. He must, if he is going away for the winter, turn off the water and empty the boiler. He must clean the chimneys, when necessary, and also the windows. He must mend the electric light when it fuses. He must unstop the sink when it is blocked by his waste. In short, he must do the little jobs about the place which a reasonable tenant would do. In addition, he must, of course, not damage the house, wilfully or negligently; and he must see that his family and guests do not damage it: and if they do, he must repair it. But apart from such things, if the house falls into disrepair through fair wear and tear or lapse of time, or for any reason not caused by him, then the tenant is not liable to repair it."

It would, therefore, appear that a weekly tenant is liable only to use the premises in a tenant-like manner and is not liable for fair wear and tear. The liability of a monthly or a quarterly tenant as such has never been decided, but presumably it is the same as that of a weekly tenant.

4. Tenant for a Term

A tenant for a term of years who has not given an express covenant to repair (*r*) is liable for both voluntary and permissive waste (*s*): this liability for voluntary waste extends even to cases when such waste is committed by a trespasser (*t*). There are

(*r*) *Jones* v. *Hill* (1817) 1 Moo.C.P. 100.

(*s*) *Yellowly* v. *Gower* (1855) 11 Ex. 274, *per* Parke B., at p. 294, following Coke, 1 Inst. 53, and *Harnett* v. *Maitland* (1847) 16 M. & W. 257; *Davies* v. *Davies* (1888) 38 Ch.D. 499, *per* Kekewich J., at p. 504.

(*t*) *Attersoll* v. *Stevens* (1808) 1 Taunt. 183; *Anon.* (1370) Y.B. 44 Edw. 3, fo. 27.

very few cases in which the courts have considered what constitutes permissive waste, and it has never been clearly defined. It has been held to be permissive waste to allow fences (*u*) or a roof (*a*) to fall into disrepair, but not to be permissive waste to leave land uncultivated (*b*). A tenant liable for permissive waste is not on that account liable to repair damage which would normally constitute such waste when such damage is caused by accidental fire (*c*) or by circumstances (such as tempest or king's enemies) which he cannot control and which give him no remedy over against a third person (*a*). The only work in which permissive waste is considered in detail is Coke's Institutes. Coke there cites as examples of permissive waste, suffering a house to decay (*d*), or to be so uncovered that the timbers become rotten, allowing the walls to decay for want of paint or plastering, allowing the foundations to be rotted by neglecting to scour out a ditch, allowing a sea or river-wall to decay so that a meadow is surrounded, allowing deer to disperse from a deer park or depleting a dove house, warren, park, fishpond or the like (*e*). It is doubtful whether the courts today would accept that all the foregoing constitute permissive waste: even the old exception for damage done by tempests already mentioned (*a*) is not wholly in accordance with the writings of Coke, which cast on a tenant the duty to repair a house uncovered by lightning (*f*). In any event it is doubtful whether under modern conditions the liability for permissive waste adds anything to the liability to use in a tenant-like manner, which has already been considered and upon which landlords far more often found successful claims.

Conclusion

The law relating to the implied obligation to repair as between landlord and tenant has travelled far since the eighteenth century, when such liability as existed was imposed entirely upon the tenant. Today tenancies without express covenants are rare except in the case of lettings at a low weekly or monthly rent, and the effect of recent legislation and judicial decisions has, therefore, been largely to reverse the former position. The main burden is now upon the landlord.

(*u*) *Cheetham* v. *Hampson* (1791) 4 T.R. 318.
(*a*) *Paradine* v. *Jane* (1647) Aleyn 26; cited and followed by Martin B. in *Carstairs* v. *Taylor* (1871) L.R. 6 Ex. 217, 223.
(*b*) *Hutton* v. *Warren* (1836) 1 M. & W. 466.
(*c*) Fires Prevention (Metropolis) Act, 1774, s. 86.
(*d*) 2 Inst. 145.
(*e*) Co.Lit. 53a and 53b.
(*f*) Co.Lit. 53a: Bac.Ab.title Waste.

THE NEW NATIONAL CONDITIONS OF SALE

By E. O. Walford, ll.d., Solicitor

It is nearly five years since the fifteenth edition of the National Conditions of Sale appeared, and the sixteenth edition contains a considerable number of revisions. It has been said that the National Conditions of Sale are often used in preference to the Law Society's Conditions owing to the fact that they are weighted more heavily in favour of the vendor. To some extent the advantage to the vendor of employing the National Conditions of Sale has been reduced by the revisions effected in the new edition.

It is not proposed in this article to deal with points which are sufficiently covered by the notes concerning the chief alterations issued with the new edition; but a number of points call for special mention.

Expedited Exchange of Contracts

Like the new edition of the Law Society's Conditions the new National Conditions of Sale contain a provision (Condition 13) for use in cases where the purchaser's solicitors are not making the usual pre-contract searches before exchange of contracts. Whilst the matters giving rise to a right of rescission (by the indirect procedure contained in Condition 13) do not appear to be quite so numerous or sweeping as those contained in the similar Law Society's Condition, they include most of the matters which are likely to emerge from the usual pre-contract searches and inquiries.

It is thought that unless and until the Law Society issues a statement to the contrary practitioners should not omit the usual searches and inquiries without express instructions from their clients. It will no doubt be difficult to explain clearly to a client the exact risks which will be run if such searches and inquiries are omitted, and if there is some matter beyond those mentioned in Condition 13 and which does give trouble to the client after exchange of contracts, the likelihood that the practitioner will have mentioned that specific matter is slender.

The other alterations which call for special mention can now be dealt with in the same order as the Conditions.

Condition 2 (*Reserve price and bidding*)

The point of the revision is that in order to ensure that the Sale of Land by Auction Act, 1867, is complied with, it is now

expressly stated that the sale is subject to a reserved price (unless otherwise provided), and not, as previously, that the vendor has the right to fix a reserve price.

The provision declaring that no bid shall be retracted is retained for what it is worth. It will be recalled that it is doubtful whether such a stipulation is effective unless the hammer has fallen before the bid is withdrawn.

Condition 3 (*Fixtures and chattels*)

Clause (1) of this Condition incorporates a warranty that any chattels, fixtures or fittings included in the sale are not subject to any hire, hire purchase, or credit sale agreement; *cf.* the Sale of Goods Act, 1893, s. 12, which renders the Condition unnecessary as to chattels.

Conditions 5 *and* 6 (*Apportionments and interest*)

These Conditions must be considered together, as they are in some respects interdependent. The writer found it very difficult at first to understand the intention or effect of the revisions, and is doubtful whether those revisions will be generally acceptable in relation to cases where there may be a delay in completion. It is therefore proposed to deal with those Conditions, particularly Condition 5, at some length.

Condition 5 provides that "the purchase being completed" the income and outgoings are to be apportioned, as therein provided.

Basis of Apportionment.

The basis of apportionment depends upon the circumstances:

(1) Condition 6 contains the usual provision for payment of interest, as from the completion date, with the usual clause enabling the purchaser, if not in default, to stop interest running by depositing the balance of the purchase-money at a bank, and notifying the vendor.

(2) If the sale is to a tenant in possession of the whole property at a rent, or if the vendor elects to take the income less outgoings up to the actual completion date, then the income and outgoings will be apportionable as at the actual completion date. So far so good.

(3) In any other case the income and outgoings are to be apportioned as at the date fixed for completion. Thus, in the very frequent cases where the occupying vendor is to give vacant possession, that provision will apply,

> and if the purchaser is in default he will be required to pay the outgoings from the date fixed for completion, and interest on the balance of the purchase price at 5 per cent. (*a*). But here comes the extraordinary portion of the revised Condition 5 (ii), namely that " in respect of any property or any part of the property which is producing no income a vendor retaining or withholding possession after [the date fixed for completion] shall be charged the equivalent of a fair rent."

Delay and trouble may arise out of a dispute as to what is " a fair rent " for the property or part of which the vendor retains or withholds possession; but there is a matter which is of even greater importance. No suggestion is made in the Condition that it is confined to cases in which the vendor is the party responsible for the delay in completion. It would therefore appear to apply to such cases as the following:

(1) The vendor has vacated the property and is " withholding " possession until the purchaser makes good his default by completing the purchase, or

(2) The vendor, not knowing whether the defaulting purchaser will ultimately complete the purchase, remains in occupation until he knows whether the purchaser will make good his default.

Unless the court is able to evoke some principle which prevents a defaulting purchaser from enforcing the clear terms of the contract, which seems most improbable, the vendor will in those cases be compelled to accept interest less tax whilst allowing to the defaulting purchaser a full rent without deduction of tax. It is thought that the result in many cases would be that the longer the purchaser could delay the purchase the more the vendor would lose. Even though the vendor may have the power to determine such delay by operating under Condition 23, if the principle involved in the Condition is wrong it is no answer to the criticism here made that the vendor will not necessarily be subjected to a loss for any considerable period.

Whilst it is stated in the Notes which are issued with the Conditions that this provision " points to and reflects the law as laid

(*a*) Whilst Condition 6 (iii) provides that the vendor is not to receive income and also interest for the same period, the wording of Condition 5 (ii) appears to make it reasonably clear that beneficial occupation by a vendor is not to be deemed equivalent to income. In *Metropolitan Ry.* v. *Defries* (1877) 2 Q.B.D. 189, there are dicta which suggest that the value of such beneficial occupation would be regarded as " rents and profits " (and thus income) in the absence of the special wording appearing in Condition 5 (ii).

down in *Metropolitan Ry.* v. *Defries* (1877) 2 Q.B.D. 189," it is respectfully submitted that such is not the case, and that even if it were, it is quite unreasonable that a non-defaulting vendor should in such circumstances be charged with an occupation rent whilst rightly withholding or retaining possession owing to the purchaser's default. No support for the above-mentioned statement in the Notes is to be found in such works as Webster on Conditions of Sale (3rd ed.), p. 342; Williams on Vendor and Purchaser (4th ed.), p. 61; Williams on Title, p. 527. It is pointed out, for example, in Webster, *supra*, that in *Metropolitan Ry.* v. *Defries*, *supra*, the vendor was in default, and the relevant passages in the other works above mentioned tend to confirm the view that a vendor properly remaining in possession after the date fixed for completion, owing to the purchaser's default, is not chargeable with an occupation rent under an open contract: see also *Leggatt* v. *Metropolitan Ry.* (1870) 5 Ch.D. 716; *Dakin* v. *Cope* (1827) 2 Russ. 170. The Notes issued with the National Conditions, refer to cases where completion is delayed in respect of *vacant* property, and state that the former Condition gave the misleading impression that the purchaser in such cases bore "the double burden of interest and outgoings without receiving any benefit in the form of rent or income"; but apart from leasehold property void allowance would be applicable to the normal outgoings such as rates, water rate and Schedule A income tax, so that the point made in the Notes does not seem to have any considerable force.

Practice Note

Whatever may be the true construction or justification of the revised Condition now under discussion, it has certainly not been the practice to charge a vendor who remains in possession owing to the purchaser's delay in completing the purchase with an occupation rent. The opinion is here expressed that, in order to avoid all doubt a vendor's solicitor who employs or incorporates the National Conditions of Sale, should insert the following Special Condition:

> "No occupation rent or its equivalent shall be payable or allowable by the vendor in respect of the withholding or retention of possession of the property or any part thereof after the completion date unless the delay in completion is due to his default or failure to deduce title in accordance with the contract."

It might be desirable, *ex abundante*, to declare also that any benefit derived from the retention or withholding of possession by

the vendor is not to be deemed to be income for the purpose of Condition 6 (iii) (*b*).

Occupation Pending Completion

There is an exception in Condition 6 (iii) which negatives the right of the vendor to enjoy the income of property and charge the purchaser with interest in respect of the same period. That exception is in relation to Condition 7. That Condition deals with cases in which the purchaser (not being already in occupation as tenant at a rent) is let into occupation before completion. It will be noted that under Condition 7 (ii) a purchaser thus let into occupation of property must pay interest at 5 per cent. per annum (less tax) on the remainder of the purchase money. The interest will continue to run until actual completion or until the purchaser goes out of possession. There would seem to be nothing to prevent the purchaser from leaving the property arbitrarily a day or two after he is let into possession. Some vendors' solicitors may think that this is unreasonable, the normal intention being that the purchaser shall go into possession and stay there until the completion date, and then complete the purchase. If so, they may think that it is right to insert a special condition under which the interest payable under Condition 7 (ii) shall continue to run until actual completion whether the purchaser remains in possession or not, except during such period or periods as the completion is delayed by the vendor's default or his failure to deduce title in accordance with the contract.

Condition 7 does not deal with cases in which the purchaser is a tenant in possession at a rent. Such cases are covered by Condition 5 (ii), the rent being payable by the tenant up to the actual date of completion (*c*). Owing to the nature of the case a purchaser who is a tenant at a rent, but is not occupying the property, would not be affected by Condition 7; such cases are covered by Condition 5 (ii) unless the vendor elects to take the net income up to the actual date of completion pursuant to Condition 6 (i). There may be other cases falling within Condition 7, but at the moment they do not occur to the writer. Accordingly he is unable to state in what circumstances a vendor could "by the operation of Condition 7" (in the words employed in Condition

(*b*) See, however, footnote (*a*), *supra*, where the view is expressed that this point could not be successfully taken.

(*c*) Condition 6 (iii) prevents the vendor from claiming interest in addition to rent in respect of any delay in completion. Views may differ concerning the desirability of imposing an additional pecuniary penalty of some kind on defaulting purchasers who remain in possession after completion date.

6 (iii)) become entitled to both interest and the enjoyment of income. If Condition 7 dealt with cases in which a purchaser was let into possession of *part* of the property, some other part being let, then no doubt the vendor would receive both rent and interest for a period; but whether the purchaser would then pay interest from the date of possession on the whole of the balance of the purchase money is quite another question.

Space is not available here for a detailed consideration of all the revisions. Three further matters of importance are dealt with below, but for the rest those employing the National Conditions of Sale will have the help of the Notes above mentioned.

IMPLIED COVENANTS BY VENDOR

In the Notes last mentioned reference is made to Condition 10, and to *Butler* v. *Mountview Estates, Ltd.* [1951] 2 K.B. 563; but no reference is made to a suitable precedent.

Practice Note

It is essential in most cases where leasehold property is sold to modify the vendor's implied covenant: see the form 8 in Vol. 15 of *The Conveyancer*, at p. 526.

FORFEITURE AND RESALE

The reader is referred to the above-mentioned Notes dealing with Condition 23. It is there stated that Condition 23 "is in effect an express power for the vendor to make time of the essence of the contract." It will be observed that the new Condition requires that such notice must allow the purchaser *not less* than twenty-eight days in which to complete, whereas the Law Society's Conditions require at least a twenty-one days' notice. Having regard to the fact that in straightforward cases the purchaser is allowed only about a month in which to investigate the title and complete the purchase, it would seem that a twenty-eight days' notice would in simple cases be considered by the court to be sufficient, but in view of certain judicial dicta and decisions it is gravely doubted whether Condition 23 of the National Conditions does in all cases enable the vendor to make time of the essence so as to prevent the court from enforcing specific performance after expiry of the notice. For example, if the purchaser died, say, on the date fixed for completion, and it was impracticable for a grant of probate or letters of administration to be obtained to his estate for, say, six or eight weeks, it seems quite probable

that the court would hold that a twenty-eight days' notice served immediately after the date fixed for completion was ineffective unless for some other reason time was of the essence of the contract: *cf. Crawford* v. *Toogood* (1879) 3 Ch.D. 153.

Practice Note

In cases in which it is in fact intended that time shall be of the essence of Condition 23 (1), it is recommended that it should be so stated in the Special Conditions. The effectiveness of such a statement is established beyond all question; but in addition it should be declared that the words "not less than" which precede the words "28 days" in Condition 23 shall stand deleted.

RESALE BY PUBLIC AUCTION

Condition 23 provides that if the purchaser does not comply with the notice above mentioned requiring him to complete within not less than twenty-eight days the vendor may forfeit the deposit, and resell *by public auction*. The Notes above mentioned state that a sale by public auction is required in order to protect purchasers against collusive or improvident sales by private treaty. Few, if any, will deny that the object of the revision is laudable; but whether it will be generally acceptable to vendors, or is effective, is questionable. In many cases property offered for sale by auction does not sell until after the auction. Even if the vendor is to be required to *offer* the property for sale by auction, is it desirable or even necessarily beneficial to the defaulting purchaser that he should be prevented from accepting a subsequent offer for purchase by private treaty if the property is not sold at the auction? No doubt the vendor could legally sell by auction without reserve; but it would not be a normal or even a safe course. In any case it would not afford much protection to the purchaser against a sale at an unduly low price.

From *Harold Wood Brick Co., Ltd.* v. *Ferris* [1935] 2 K.B. 198, it appears that the vendor could disregard the terms of the Condition and proceed under his rights at common law to resell by auction *or private treaty*, and sue for damages. There is, therefore, at least some ground for suggesting that the Condition does not achieve its avowed object.

Practice Note

Practitioners should consider whether the words "or private treaty" should be inserted in Condition 23 (1) after the words "public auction," and should also consider whether, following the

Law Society's Conditions, the Condition should extend to a resale within one year from the date fixed for completion, instead of six months from the expiry of the default notice.

It seems that the Condition does not allow the vendor to recover the expenses of the abortive sale to the purchaser as well as the expenses of the resale, but only the *loss* suffered in consequence of the expenses of the original abortive sale and the expenses of the resale or any attempted resale; but the present writer is unable to understand how the expenses of the abortive sale could form part of the loss *upon a resale*. If the purchaser had completed the purchase the vendor would have had to meet the expenses of the sale. If he resells and incurs expenses in so doing and the amount which he receives after deducting the expenses of the resale does not equal the original purchase price *less the expenses of the abortive sale*, then the vendor suffers a loss to that extent. The Condition, however, implies that the expenses of the abortive sale may constitute a part of the vendor's loss. That is not the true position. If the vendor recovers by the resale (after deducting the expenses of resale) a sum equal to the original price less the expenses of the abortive sale, he suffers no loss. In other words the purchaser is in equity entitled to a *set-off* of the expenses of the abortive sale, and they could not be treated as part of the "loss" recoverable from him: see Williams on Vendor and Purchaser (4th ed.), p. 1017, footnote (*z*). That criticism was applicable also to the last edition of these Conditions, but there the recovery of any loss on resale was limited to cases where the original abortive sale was by auction. The new Condition applies whether the original abortive sale was by private treaty or auction.

CONCLUSION

The new edition of the National Conditions of Sale is in many respects difficult to follow. In fact the more the writer examines those Conditions as now revised the more he prefers the Law Society's Conditions, whether the position is considered from the viewpoint of the vendor or of the purchaser.

THE LAW OF STAMP DUTIES

(*Continued from p.* 397)

By J. G. Monroe, Barrister-at-Law

II The Fixed Duties

General

There are three fixed stamp duties commonly met with in addition to the duty of 5s. payable on a duplicate or counterpart where the original requires a stamp of more than 5s., which is to be distinguished from most other fixed duties by the fact that a denoting stamp is necessary in addition to the fixed duty (*a*). The three other rates of duty commonly met are 2d., 6d. and 10s. In addition there are other rare fixed duties. Thus the duty of 1s. is payable on a letter of attorney by seamen and others in respect of receipts of wages and prize money and a letter of attorney for the receipt of one payment of dividends or interest on stock (*b*), and the duty of 5s. is payable not only on the duplicate or counterpart above referred to, but also on a letter of attorney for the receipt of more than one payment of dividend or interest on stock (*c*), and in Scotland on a precept of *clare constat*, resignation or seisin (*d*). A very much wider range of fixed duties was exacted before the Finance Act, 1949 (*e*), effected a wholesale repeal of unproductive duties. As will be seen in connection with leases, certain leases (primarily those under which there is no premium and no rent) bear a fixed duty of £1 or £2.

The fixed duty of 2d.

The fixed duty of 2d. is payable on two very common documents : the cheque and the receipt. The duty on the cheque is imposed by the Stamp Act, 1891 (*f*), under the heading in the Schedule " Bill of Exchange payable on demand or at sight or on presentation or within three days after sight " (*g*). The duty,

(*a*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 72, and Schedule I: Duplicate or Counterpart.
(*b*) *Ibid.*, Schedule I: Letter of Attorney.
(*c*) *Ibid.*
(*d*) *Ibid.*, Schedule I: Precept of Clare Constat; Resignation; Seisin.
(*e*) 12 & 13 Geo. 6, c. 47, ss. 35 and 52, and Schedules VIII and XI.
(*f*) 54 & 55 Vict. c. 39.
(*g*) The words " or within three days after signed " were in effect added by the Revenue Act, 1909 (10 Edw. 7, c. 8), s. 10.

originally 1d., was raised to 2d. by section 36 of the Finance Act, 1918 (*h*). Other bills of exchange pay *ad valorem* duty and will be considered in a later article. The expression "bill of exchange payable on demand" is defined as including (inter alia) an order for the payment of any sum of money at stated periods and sent to the person by whom the payments are to be made (*l*), *e.g.*, a banker's order. Any instrument having the effect of a cheque must be stamped as such. Thus where a bank sought to enable its customers to draw amounts of less than £2 by instruments purporting to be receipts (known colloquially as chequelets), forms of which were provided in books, the Revenue successfully contended that they were liable to duty as cheques (*m*). The *ad valorem* duty on other bills of exchange will be considered in a later article together with the statutory definition of a bill of exchange (*n*). For present purposes it is sufficient to say that the definition includes a cheque but does not include a promissory note. A cheque however far post-dated requires only the duty of 2d. (*o*).

The duty of 2d. may be denoted by an adhesive stamp which, where the instrument is drawn in the United Kingdom, must be cancelled by the person who signs it before he delivers it out of his hands (*p*). Where the instrument is drawn (or purports to be drawn (*q*)) abroad a stamp must be affixed to it and cancelled before it is negotiated or otherwise dealt with in the United Kingdom (*r*). The instrument cannot otherwise be stamped after execution (*s*), except that a person to whom it is presented for payment unstamped may affix a stamp to it and cancel it (*t*), and that bills of exchange (including cheques) presented for acceptance, accepted or payable abroad may be stamped after execution with an impressed stamp on payment of the usual penalty (*u*). There is a fine imposed for issuing an unstamped

(*h*) 8 & 9 Geo. 5, c. 15.

(*l*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 32.

(*m*) *Midland Bank, Ltd.* v. *I. R. C.* [1927] 2 K.B. 465.

(*n*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 32.

(*o*) *Misa* v. *Currie* (1876) 1 App.Cas. 554.

(*p*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 34 (1). The adhesive stamp will be an ordinary postage stamp: *ibid.*, s. 7.

(*q*) *Ibid.*, s. 36.

(*r*) *Ibid.*, s. 35.

(*s*) *Ibid.*, s. 37.

(*t*) *Ibid.*, s. 38 (2). This right of stamping after execution cannot be exercised by any other holder and a cheque stamped by, say, the payee after execution is void even against a holder for value without notice: *Hobbs* v. *Cathie* (1890) 6 T.L.R. 292.

(*u*) Finance Act, 1933 (23 & 24 Geo. 5, c. 19), s. 43.

bill of exchange (*a*) which is not affected by either of the preceding exceptions.

The other instrument that bears fixed duty of 2d. is a receipt given for or upon the payment of money amounting to £2 or upwards (*b*). A receipt is defined at some length (*c*) and includes any note or memorandum whereby any amount, or bill of exchange (including a cheque) or promissory note for money, is acknowledged, or expressed to have been received or deposited, or paid, or whereby any debt or demand or any part thereof is acknowledged to have been settled, satisfied or discharged. The term thus includes other matters than receipts for money previously owing; any document acknowledging money deposited or acknowledging a debt to be satisfied (not necessarily by a payment in cash or cheque) is a receipt. Moreover, it is not necessary that money paid out and out (for which a receipt is given) should have been recoverable by action for the receipt to require a stamp. Any document which the payer is to use as an acquittance for himself (*e.g.*, as proof to a principal that money has been properly applied) is a receipt requiring a stamp (*d*), though, of course, a letter of thanks for a money gift is not (*e*). It has been said that the multiple invoices used by employers of large shops, being intended for book-keeping purposes only, are not regarded as documents of acquittance to the person who pays the money and are not chargeable (*f*). It must be doubtful whether this dispensation really extends to the documents commonly handed out in shops on the occasion of a cash sale. The charge to duty extends only to "receipts given" and a document which remains the property of the person receiving the payment (though available in evidence against him) is not "given" and may not even be a receipt (*g*).

The Schedule to the Act contains a long list of exemptions to which one must refer for the full particulars (*gg*). The most important exemptions are those in respect of receipts for wages, salary and pensions (*h*), and receipts indorsed or written on, or contained in, any instrument liable to stamp duty and duly stamped acknowledging the receipt of the consideration money therein

(*a*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 38 (1).
(*b*) *Ibid.*, Schedule I: Receipt, etc.
(*c*) *Ibid.*, s. 101.
(*d*) *General Council of the Bar* v. *I. R. C.* [1907] 1 K.B. 462.
(*e*) *Ibid.*, at p. 476.
(*f*) *Att.-Gen.* v. *Carlton Bank* [1899] 2 Q.B. 158, at p. 165.
(*g*) *Att.-Gen.* v. *Northwood Electric Light and Power Co.* [1947] K.B. 27.
(*gg*) See also Finance Act, 1953 (1 & 2 Eliz. 2, c. 34), s. 31 (1).
(*h*) See now Finance Act, 1924 (14 & 15 Geo. 5, c. 21), s. 36.

expressed or the receipt of any principal money, interest or amount, thereby secured or therein mentioned. It is this exemption which saves the receipt clause commonly found in conveyances on sale from requiring a separate stamp and which enables a receipt indorsed on a debenture creating a floating or other equitable charge to go unstamped even though the receipt incidentally in effect disposes of the charge (*l*). In view of this provision it is difficult to understand why persons who like to have the receipts given to them on the back of their cheques also require them to be stamped.

The duty of 2d. on a receipt may be denoted by an adhesive stamp which must be cancelled by the person by whom it is given before he delivers it out of his hands (*m*). A receipt may be stamped up to fourteen days after it is given on payment of a penalty of £5, and up to one month on payment of a penalty of £10, but not later than one month after it is given (*n*). A fine of £10 is imposed for giving an unstamped receipt, for refusing to give a receipt which (if given) would require a stamp and for attempting to evade the duty by dividing a receipt for more than £2 up into small units each below £2 (*o*). In practice the Revenue do not exact these penalties in the case of receipts given by charities for contributions to their funds. Such receipts, if unstamped, are none the less inadmissible in evidence.

It will later be seen that in some cases a receipt may require to be stamped as a conveyance on sale (*p*), an agreement (*q*), as a reconveyance or discharge of mortgaged property (*r*) or as a transfer of a mortgage (*s*).

The fixed duty of 6d.

The primary charge of 6d. is that imposed on an "agreement or any memorandum of an agreement made in England . . . under hand only or in Scotland without any clause of registration and not otherwise specifically charged with duty" (*t*). Certain other

(*l*) *Firth & Sons* v. *I. R. C.* [1904] 2 K.B. 205.

(*m*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 101 (2). The adhesive stamp will be an ordinary postage stamp: *ibid.*, s. 7.

(*n*) Stamp Act, 1891 (54 & 55 Vict. c. 39). s. 102. A receipt executed abroad and requiring to be stamped may be stamped after execution as provided in s. 15; *The Belfort* (1884) 9 P.D. 215.

(*o*) *Ibid.*, s. 103.

(*p*) *Horsfall* v. *Hey* (1948) 2 Ex. 778; *Garnett* v. *I. R. C.* (1899) 81 L.T. 633.

(*q*) *Fleetwood-Hesketh* v. *I. R. C.* [1936] 1 K.B. 351; *Simpson's Trustees* v. *Simpson*, 1933 S.C. 128.

(*r*) Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 115 (1) (5).

(*s*) *Ibid.*, s. 115 (2) (5).

(*t*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Schedule I: Agreement or any Memorandum of an Agreement.

types of agreement are specifically charged with a duty of 6d. (*u*). These other cases are not limited to documents under hand only and the 6d. duty is payable even if the instrument is under seal; nor to instruments not otherwise charged with duty. In the case of policies of insurance which attract a fixed duty of 6d. a fine is imposed on persons who receive premiums and do not within one month issue a duly stamped policy or pay out on an unstamped policy (*a*). The duty may in case of all these agreements, contracts and policies be denoted by an adhesive stamp (*b*).

By far the most important of the instruments requiring a fixed duty of 6d. is the primary charge on an "agreement or any memorandum." There is no definition of agreement in the Act and there is a wide assortment of old cases in which the questions what is an agreement and what is not are answered. It is impossible here to deal with more than the salient points. A proposal in writing is not an agreement and requires no stamp even if by oral acceptance it becomes a contract (*c*). If it is accepted in writing the acceptance, or possibly (in the alternative) the proposal (*d*), must be stamped. Further the acceptance of an oral proposal (*e*), and an oral agreement subsequently reduced to writing (*f*) must be stamped. But an instrument is not liable to duty as an agreement merely because it evidences an agreement without amounting to a memorandum of agreement (*g*). Nor is either a mere licence without consideration to do what would otherwise be wrongful as against the licensor (*h*) or an acknowledgment of the rights of another (*l*) to be stamped as an agreement.

If an agreement is reduced to writing it requires a stamp even though it is not signed by all the parties (*m*) or even if the contract is required by the Statute of Frauds (*n*) or other enactment

(*u*) *e.g.*, certain agreements for the maintenance of highways (*ibid.*, Schedule I: Agreement or Contract); policies of insurance (other than sea and life insurance (*ibid.*, Schedule I: Policies of Insurance), Finance Act, 1920 (10 & 11 Geo. 5, c. 18), s. 40. For definitions, see ss. 91 and 98 (2) of the 1891 Act).

(*a*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 100.

(*b*) Stamp Act, 1891 (54 & 55 Vict. c. 39). ss. 22 and 99. The adhesive stamp will be an ordinary postage stamp: *ibid.*, s. 7.

(*c*) *Carlill* v. *Carbolic Smokeball Co.* [1892] 2 Q.B. 484; on appeal [1893] 1 Q.B. 256.

(*d*) See *Peate* v. *Dicken* (1834) 1 Cr.M. & R. 422, and *Beeching* v. *Westbrook* (1841) 8 M. & W. 411, which were both, however, decisions on a differently worded Act.

(*e*) *Hegarty* v. *Milne* (1854) 14 C.B. 267.

(*f*) *Knight* v. *Barber* (1846) 16 M. & W. 66.

(*g*) *Frazer* v. *Bunn* (1838) 8 C. & P. 704.

(*h*) *Hill* v. *Raman* (1843) 5 M. & G. 789.

(*l*) *Blackwell* v. *M'Naughtan* (1841) 1 Q.B. 127.

(*m*) *Fleetwood Hesketh* v. *I. R. C.* [1936] 1 K.B. 351, at p. 367.

(*n*) (1677) 29 Car. 2, c. 3.

to be evidenced in writing and the writing in question does not satisfy the statute (*o*). The words "under hand only" in this charge to duty do not imply that any signature at all is necessary; they merely indicate that the charge does not apply to an instrument under seal (*p*). The Act provides that certain mortgages of stock and marketable securities by deposit of certificates, etc. (together in some cases with an instrument of transfer of registered stock) shall be stamped as agreements (*q*). This will be considered more fully in connection with mortgages.

The First Schedule to the Stamp Act, 1891 (*r*), contains some important exemptions from this charge to duty and a further series of exemptions was introduced by the Finance Act, 1949 (*s*). It should be remembered that in general these exemptions are exemptions only from the duty of 6d. If the agreement is under seal or for some other reason falls under another head of liability the exemptions do not apply. The exemptions under the Stamp Act, 1891 are (1) agreements the matter whereof is not of the value of £5; (2) agreements for the hire of any labourer, artificer or menial servant; (3) agreements made for or relating to the sale of goods, wares or merchandise (*t*); and (4) agreements between the master and mariners of any ship on a coastwise voyage from port to port in the United Kingdom. Further number (2) of the General Exemptions from all stamp duties at the end of the First Schedule to the Stamps Act, 1891 exempts from all stamp duties instruments for the sale, transfer or other disposition of any ship or vessel. This will relieve many contracts relating to ships (*u*) not already relieved under the exemption for sale of goods. Finally the Finance Act, 1949 (*a*), effected an extensive repeal of various unproductive duties on instruments which have incidentally been relieved from duty under the head agreement (*b*).

(*o*) *Glover* v. *Halkett* (1857) 2 H. & N. 487.

(*p*) *Chadwick* v. *Clarke* (1845) 1 C.B. 700.

(*q*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 23.

(*r*) *Ibid.* Schedule I: Agreement, etc., Exemptions. See also General Exemptions at the end of Schedule.

(*s*) 12 & 13 Geo. 6, c. 47.

(*t*) Note the wide words "or relating to." But this exemption does not apply to hire-purchase: Finance Act, 1907 (7 Edw. 7, c. 13), s. 7.

(*u*) *Cf. British Italian Corpn.* v. *I. R. C.* [1921] W.N. 273, more fully reported in Sergeant on Stamp Duties, 2nd ed., p. 318.

(*a*) 12 & 13 Geo. 6, c. 47, s. 35, and Schedule VIII.

(*b*) These include Instrument of apprenticeship, *ibid.*, Schedule VIII, para. 4; Articles of clerkship, *ibid.*, para. 5; Charterparty, *ibid.*, para. 7; Letter of allotment; Letter of renunciation, scrip (*e.g.*, a letter of rights or provisional letter of allotment), any agreement for the issue allotment or sale of any stock or marketable security, *ibid.*, para. 17; and Warrant for goods, *ibid.*, para. 27.

Agreements subject to a larger duty than 6d.

It would be inappropriate to leave the subject of the fixed duty of 6d. without alluding to the other and much heavier duties that may be payable on an agreement under other heads that will be considered hereafter. The main charge to the duty of 6d. is, of course, a charge only on instruments not otherwise specifically charged so that these other duties are not alternatives but on the appropriate instruments are the only proper duties. Among such duties are the fixed duty of 10s. on a deed (*c*) which may affect any instrument under seal; and *ad valorem* duty on certain agreements for the sale of property as if they were conveyances (*d*) and an agreement for leases for not more than thirty-five years as if they were leases (*e*); *ad valorem* duty under any of the following heads in the Schedule to the Stamp Act, 1891 (*f*), *viz.* :— Bill of Exchange or Promissory Note; Bond Covenant or other Instrument for Payment of Money at Stated Intervals; Marketable Security; Mortgage Bond Debenture Covenant; Policy of Insurance; and Share Warrant or Stock Certificate to Bearer; and *ad valorem* duty on contract notes used in connection with Stock Exchange transactions (*g*).

The fixed duty of 10s.

The fixed duty of 10s. is charged upon what on the face of it is a very wide range of instruments. In fact most of the instruments covered by the charge would be covered by the single charge of 10s. on a deed. It will perhaps be most convenient to take the various heads in approximate order of importance.

(1) **Deed.** A duty of 10s. is charged on every deed (*h*) which does not attract a larger or smaller (*l*) duty under some other head simply because it is a deed. There is no definition of a deed in the Act and a deed is not at all easy to define (*m*). An individual's deed must be signed, sealed and delivered by him (*n*)

(*c*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Schedule I; Deed of any kind whatsoever.

(*d*) *Ibid.*, s. 59.

(*e*) *Ibid.*, s. 75.

(*f*) 54 & 55 Vict. c. 39.

(*g*) Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 78.

(*h*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Schedule I: Deed of any kind whatsoever not mentioned in this Schedule.

(*l*) *e.g.*, a smaller duty is paid on seven-year covenants in favour of charities and others attracting so-called " Bond covenant duty " where the total amount covenanted does not exceed £150.

(*m*) For a definition, see Norton on Deeds, 2nd ed., p. 3.

(*n*) Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 73 (1).

or on his behalf by an agent authorised by deed. The deed of a body corporate must have the corporate seal affixed as provided by its constitution and must be delivered by it or on its behalf. But an instrument is not necessarily a deed because it is under seal. Generally speaking any non-testamentary instrument under seal creating or assigning an interest in property or imposing an obligation or confirming the existence of an obligation already imposed will be a deed. On the other hand an award under seal (*o*) a share certificate (*p*) (and presumably a debenture stock certificate) a licence issued in pursuance of a contract to grant a licence not being itself the contract (*q*), are not deeds. The memorandum and articles of association of a company under the Companies Act, 1948 (*r*), must be stamped as deeds. A letter of allotment or renunciation or any scrip are exempt from the duty on deeds (*s*), but the exemption does not extend to the request for registration of the renouncee of a renounceable letter of allotment. Such a request, if under seal, is regarded by the Revenue as a deed as it contains in it a consent to be registered as a member and to incur the obligations of membership. No duty is claimed where the request is under hand only (*s*). The general exemptions from all stamp duties contained at the end of the First Schedule to the Stamp Act, 1891 (*t*) which will be considered later, of course, exempt all deeds falling within the exemptions from the 10s. duty.

2. **Conveyance or transfer of any kind not "hereinbefore" described** (*u*). It may be thought to be putting the cart before the horse to refer to the residual provisions of the First Schedule to the Stamp Act, 1891 (*a*) under the heading "conveyance" before dealing with the conveyances "hereinbefore" described. But there is a statutory definition of it (*b*), as every "instrument, and every decree or order of any court or any commissioners, whereby any property on any occasion, except a sale or a mortgage, is transferred to or vested in any person." As a result of the introduction of duty on voluntary conveyances (*c*), they too must now be added

(*o*) *Brown* v. *Vawser* (1804) 4 East 584.
(*p*) *R.* v. *Morton* (1873) L.R. 2 C.C.R. 22, at p. 27. *South London Greyhound Racecourses* v. *Wake* [1931] 1 Ch. 496, at p. 503.
(*q*) *Chanter* v. *Johnson* (1845) 14 M. & W. 408.
(*r*) 11 & 12 Geo. 6, c. 38, ss. 3 and 9 (c).
(*s*) This being exempt under Finance Act, 1949 (12 & 13 Geo. 6, c. 47), Schedule VIII, para. 17.
(*t*) 54 & 55 Vict. c. 39.
(*u*) In Scotland the corresponding heading is "Disposition."
(*a*) 54 & 55 Vict. c. 39.
(*b*) *Ibid.*, s. 62.
(*c*) Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 74.

to the exceptions, sale and mortgage, in the above definition. Into this category fall conveyances for a consideration other than cash (*d*), *e.g.*, marriage or services, conveyances where no beneficial interest passes (*e*), and conveyances or transfers of registered stock or securities accompanied by a memorandum of deposit stamped as an agreement (*f*). The Commissioners have issued a circular to officers of companies containing guidance on when they may register transfers of registered stock and securities stamped only with a 10s. stamp. This circular is a useful guide as to the views of the Revenue on the subject of conveyances of property of all kinds. The pith of the circular is printed in that part of the common-form share transfer which calls upon the parties to sign a certificate justifying a 10s. stamp. Some of the cases are obvious and will not be referred to here. Thus a transfer (*g*) to a residuary legatee in satisfaction or part satisfaction of his share of residue, a transfer to a specific legatee, a transfer to a person entitled on intestacy (not being in satisfaction or part satisfaction of the spouse's £5,000 or £20,000) a transfer to a beneficiary under a settlement on distribution of the trust funds and a transfer by the liquidator of a company to shareholders in satisfaction of their rights in a winding up (*h*) may all be effected on a 10s. stamp. On the other hand conveyances or transfers to a pecuniary legatee or in satisfaction of the statutory legacy of £5,000 or £20,000 to the spouse of an intestate made under the statutory power of appropriation (*l*) with the consent of the legatee has such a contractual element as makes it a conveyance on sale (*m*). It is thought that where the personal representatives can appropriate property to pecuniary legacies without the consent of the legatee under a clause in the will or otherwise (*n*), the contractual element is missing and *ad valorem* duty will not be payable. Accordingly a power to appropriate without the consent

(*d*) It will be seen under the heading "Conveyance on Sale" in this Article that for purposes of stamp duty certain considerations are treated as equivalent to cash.

(*e*) Finance Act (1909–10) Act, 1910 (10 Edw. 7, c. 8) s. 74 (6), as amended by the Finance Act, 1942 (5 & 6 Geo. 6, c. 21), s. 44.

(*f*) Under Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 23 (2).

(*g*) Several of the instances of transfers by personal representatives can be effected in case of property other than registered shares and securities by assent. It will be seen in a later article that most assents require no stamp at all.

(*h*) This case is referred to without either approval or disapproval in *Wigan Coal & Iron Co.* v. *I. R. C.* [1945] 1 All E.R. 392, where it was held that a transfer of shares to satisfy a reduction of capital was liable to *ad valorem* duty as a voluntary conveyance as is a transfer to satisfy a dividend in specie: *Associated British Engineering* v. *I. R. C.* [1941] 1 K.B. 15.

(*l*) Administration of Estates Act, 1925 (15 Geo. 5, c. 23), s. 41.

(*m*) *Jopling* v. *I. R. C.* [1940] 2 K.B. 282.

(*n*) See Administration of Estates Act, 1925 (15 Geo. 5, c. 23), s. 41 (1) (iv) and (v).

of a legatee may usefully be included in wills. Similarly if the legatee has the right to insist on taking assets *in specie* in satisfaction or part satisfaction of a pecuniary legacy (as has the surviving spouse of an intestate in relation to the matrimonial house (*o*)) a 10s. stamp under the present head will be sufficient.

On the conveyance of certain types of property *ad valorem* duty is payable in every case even where no beneficial interest passes though this duty is limited to 10s. in certain cases (*p*). Such property includes certain Dominion and Colonial stocks mentioned under the head of Conveyance in the First Schedule to the Stamp Act, 1891 (*q*), on which duty is payable at 5s. per £100 in all cases except sale and voluntary conveyance and mortgages on the transfer of which duty is payable at the rate of 1s. per £100 (*r*).

(3) **Exchange and partition.** A conveyance to give effect to an exchange or partition is really only an instance of the previous head. But such conveyances appear separately in the First Schedule to the Stamp Act, 1891 (*s*), and section 73 of that Act makes special provision in relation to exchanges of real or heritable property where any amount exceeding £100 is paid for equality. For then the principal or only instrument giving effect to the exchange or partition bears *ad valorem* duty appropriate to a conveyance on sale. If an exchange or partition is very beneficial to one party the Revenue could claim duty on the conveyance to that party as a voluntary disposition *inter vivos* (*t*).

For the purpose of stamp duty a conveyance in consideration of the issue or transfer of stock or marketable securities is considered to be a conveyance on sale and not an exchange (*u*).

(4) **Bond and Covenant.** Each of the expressions "Bond" and "Covenant" as used in the Stamp Act, 1891 (*a*), at any rate

(*o*) Intestates' Estates Act, 1952 (15 & 16 Geo. 6 & 1 Eliz. 2, c. 64), s. 6 and Schedule I.

(*p*) These cases are considered under the head "Duty of 10s. as a Maximum."

(*q*) 54 & 55 Vict. c. 39, Schedule I: Conveyance No. (2) not affected by Finance Act, 1920 (10 & 11 Geo. 5, c. 18), s. 36 (2), but doubled by Finance Act, 1947 (10 & 11 Geo. 6, c. 35), s. 52.

(*r*) *Ibid.*, Schedule I: Mortgage Bond Debenture Covenant, No. (4); *Martin* v. *I. R. C.* (1930) 15 A.T.C. 631. The reference in this case to a 6d. stamp must mean a stamp at the rate of 6d. per £100. The rate was doubled (to 1s. per £100) by Finance Act, 1947 (10 & 11 Geo. 6, c. 35), s. 52.

(*s*) 54 & 55 Vict. c. 39.

(*t*) See Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 74 (5). An instrument of exchange of particular property stamped as such would probably be presumed properly stamped until the contrary was shown: *cf.* sales for inadequate consideration, which are considered later.

(*u*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 55; *J. & P. Coats. Ltd.* v. *I. R. C.* [1897] 2 Q.B. 423.

(*a*) 54 & 55 Vict. c. 39, Schedule I: Bond; Covenant.

in relation to England, connotes an instrument under seal (*b*). The position in Scotland may be different but it appears that commonplace commercial documents are not bonds (*c*). The distinction between the charges on deeds, bonds and covenants is thus not very important so far as they attract the 10s. duty only. Bonds given pursuant to any Act of Parliament and administration bonds are exempt from duty (*d*). Other bonds and covenants for the payment of money are subject to *ad valorem* duty either under the heading " Mortgage, Bond, Debenture, Covenant " or under the heading " Bond, Covenant or other Instrument " in the First Schedule to the Stamp Act, 1891 (*e*), which heads are considered later.

(5) **Letter or Power of Attorney.** It has already been mentioned that a limited class of letters of attorney attracts a fixed stamp duty of less than 10s. The generality of such instruments attracts the fixed duty of 10s. (*f*). Owing to the rule that an agent who is to execute deeds on behalf of his principal must himself be appointed under seal the power of attorney is itself normally a deed. A letter or power of attorney is not charged with duty more than once by reason only that two or more persons are named in it as donors or donees of the powers thereby conferred or that such powers relate to more than one matter (*g*). The First Schedule to the Stamp Act, 1891 (*h*), under this head sets forth a series of exemptions from the duty mostly relating to dealings in Government stocks to which a reader must himself refer for details. But one exemption is important not so much for itself as for the possible light it throws on the meaning of the expression " letter or power of attorney." This exemption is in favour of an order on request or direction under hand only from the proprietor of any stock (*l*) to any company or to any officer of any company or to any banker to pay the dividends or interest arising from the stock to any person therein named. This exception is not only important in itself but it shows that this charge to duty, the full title of which is " Letter or power of attorney and commission, factory, mandate, or other instrument in the nature thereof " extends not merely to an

(*b*) *National Telephone Company* v. *I. R. C.* [1900] A.C. 1, at p. 2.
(*c*) *North of Scotland Bank* v. *I. R. C.*, 1931 S.C. 149.
(*d*) Finance Act, 1949 (12 & 13 Geo. 6, c. 47), s. 35, and Schedule VIII, para. 8.
(*e*) 54 & 55 Vict. c. 39.
(*f*) *Ibid.*, Schedule I: Letter or Power of Attorney. See also Warrant of Attorney.
(*g*) Finance Act, 1927 (17 & 18 Geo. 5, c. 10), s. 56.
(*h*) 54 & 55 Vict. c. 39.
(*l*) The definition of Stock is considered in a later article.

authority given to agents to give receipts for money due to his principal but also to directions to debtors of the principal to pay the money to an agent. This latter class of document may operate as an absolute assignment (*m*) or an assignment by way of charge (*n*), or if the amount involved is a definite sum of money (*o*), to a bill of exchange (*p*), and in each case be liable to duty as such. Whether such an instrument is a bare revocable mandate or amounts to an assignment of some sort or is a bill of exchange is a question of construction in the light of the circumstances in each case. But the court may look at the stamp which the parties have put or omitted to put on the document for assistance in the matter of construction (*q*).

Another important exemption from this duty is the instrument of proxy for use at one meeting at which votes may be given by proxy whether the number of persons named in the instrument be one or more (*r*). At the time when such proxies were charged with a duty of 1d., the date of the meeting had, under section 80 of the Stamp Act, 1891 (*s*), to be stated in the proxy for it to be exempt from duty at 10s. But with the repeal of the duty of 1d. the section requiring the date of the meeting to be stated was also repealed (*t*), and it seems that the date of the meeting need no longer be stated so long as the proxy is only for one meeting. At any rate the date of the meeting may be left blank and filled in by the proxy even if the date is unknown at the time of signing (*u*). The proxy may cover any adjournment of the original meeting (*a*). If these conditions are not fulfilled the full duty of 10s. is payable (*b*).

(6) **Appointment.** Under the heading Appointment in the First Schedule to the Stamp Act, 1891 (*c*), appointments of new trustees

(*m*) As in *Diplock* v. *Hammond* (1854) 5 De G.M. & G. 320.

(*n*) As in *Re Kent and Sussex Sawmills, Ltd.* [1947] Ch. 177.

(*o*) *Jones* v. *Simpson* (1823) 2 B. & C. 318.

(*p*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 32. A bill of exchange will normally differ from a direction to pay liable to duty as a letter of attorney in that the person giving the direction in the latter case will not intend to part with the ownership of the money paid.

(*q*) See *Re McArdle* [1951] Ch. 669, at p. 676.

(*r*) Finance Act, 1949 (12 & 13 Geo. 6. c. 47), s. 35, and Schedule VIII, para. 18.

(*s*) 54 & 55 Vict. c. 39.

(*t*) Finance Act, 1949 (12 & 13 Geo. 6, c. 47), s. 52, and Schedule XI.

(*u*) *Sadgrove* v. *Bryden* [1907] 1 Ch. 308.

(*a*) This was formerly expressly provided by Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 80 (1), which has been repealed (see note (*c*), *supra*). But an adjourned meeting is a continuation of the original meeting: see *McLaren* v. *Thomson* [1917] 2 Ch. 41; and it is thought that the above repeal has not changed the law.

(*b*) *Re English, Scottish and Australian Chartered Bank* [1893] 3 Ch. 385.

(*c*) 54 & 55 Vict. c. 39.

and appointments in execution of a power of any property, or any use, share or interest in any property by any instrument not being a will (*d*), are liable to a fixed duty of 10s. Other appointments are not as such liable to duty.

A non-testamentary instrument exercising a general power of appointment may be subject to *ad valorem* duty as a voluntary conveyance *inter vivos* (*e*), or possibly if value is given as a conveyance on sale. An appointment in favour of persons in succession may be liable to settlement duty if it cannot be brought within the special exception in favour of such appointment (*f*). In one case an appointment of new trustees to which the trust property was scheduled was charged with duty as a settlement of so much of that property as had not previously borne settlement duty (*g*).

An appointment of new trustees under which there is no express vesting provision is in practice stamped 10s., even though by virtue of section 40 of the Trustee Act, 1925 (*h*), automatic vesting follows. If there is an express provision vesting the trust property in the new trustees an additional 10s. is charged on the conveyance involved (*l*).

(7) **Release and Renunciation.** A release or renunciation, not being the release of a security or by way of security (which will be considered in connection with a mortgage) and not being a release on sale (which is charged as a conveyance on sale) is charged with a fixed duty of 10s. (*m*). Under this heading fall such instruments as a release of a power of appointment. The voluntary release of an interest in property, *e.g.*, a release by a life tenant of his life interest so as to accelerate the remainder, is stamped as a voluntary conveyance (*n*). It is submitted, however, that a disclaimer of a gift or legacy (whether of an absolute or limited interest) before it is even accepted can never be liable to duty as a voluntary conveyance but only to the fixed duty of 10s., and that only if the disclaimer was effected by deed.

A letter of renunciation, which is more accurately described

(*d*) Since the General Exemptions at the end of Schedule I exempts all testamentary instruments, it may be taken that in effect "will" includes codicil.

(*e*) See *Stanyforth* v. *I. R. C.* [1930] A.C. 339; *Fuller* v. *I. R. C.* [1950] 2 All E.R. 976.

(*f*) See Stamp Act, 1891 (54 & 55 Vict. c. 39), Schedule I: Settlement; Exemption. This exemption will be considered in a later article.

(*g*) *Cohen and Moore* v. *I. R. C.* [1933] 2 K.B. 146.

(*h*) 15 Geo. 5, c. 19.

(*l*) *Hadgett* v. *I. R. C.* (1877) 3 Ex.D. 46.

(*m*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Schedule I: Release or Renunciation.

(*n*) *Platt's Trustees* v. *I. R. C.* (1953) 32 A.T.C. 292.

as a renounceable letter of allotment, relating to shares or debentures, is exempt from duty as an agreement under hand or as a deed (*o*). In fact it does not operate as a conveyance at all but it is a negotiable instrument by custom (*p*), and the interest in the shares or securities comprised in it is transferred by delivery. It is thought that if the presentation of a letter of renunciation is delayed beyond the end of the period for which it is current and the allottee (not the renouncee) has been registered as the holder of the shares or securities, the renouncee can only be substituted in the register if the letter of renunciation is treated as a transfer and stamped accordingly.

(8) **Declaration of Trust.** A declaration of trust is stated in the First Schedule to the Stamp Act, 1891 (*q*), to be liable to a duty of 10s. In fact almost every declaration of trust must be liable to *ad valorem* duty either as a conveyance on sale (*r*) or as a voluntary disposition *inter vivos* (*rr*), or as a settlement.

Duty of 10s. *as a maximum*

There are a few cases in which *ad valorem* duty is charged, but a maximum of 10s. is imposed (*s*).

(1) Section 56 (4) of the Stamp Act, 1891 (*ss*), provides that no separate instrument securing the payment of the purchase price of property the subject of a conveyance on sale shall be charged with a larger duty than 10s.

(2) The proviso to section 62 of the Stamp Act, 1891 (*ss*), limits the duty on a conveyance or transfer for effectuating an appointment of new trustees to 10s., and section 9 of the Finance Act, 1902 (*t*), makes a like provision in relation to the retirement of a trustee. It might be thought that this provision is otiose, since a transfer or conveyance in such cases would only bear a duty of 10s. in any case, no beneficial interest passing. In fact, however, the provision is effective in limiting the duty on a transfer of certain Dominion and Colonial Stocks which pay *ad valorem* duty of 5s. per cent., even when no beneficial interest passes (*tt*), and

(*o*) Finance Act, 1949 (12 & 13 Geo. 6, c. 47), Schedule VIII, para. 17.
(*p*) *Rumball* v. *Metropolitan Bank* (1877) 2 Q.B.D. 194.
(*q*) 54 & 55 Vict. c. 39.
(*r*) As in *Chesterfield Brewery Co.* v. *I. R. C.* [1899] 2 Q.B. 7.
(*rr*) As in *Martin* v. *I. R. C.* (1930) 15 A.T.C. 631.
(*s*) The maximum rates were expressly saved from the doubling of duties effected by the Finance Act, 1947 (10 & 11 Geo. 6, c. 35); see *ibid.*, s. 55 (1).
(*ss*) 54 & 55 Vict. c. 39.
(*t*) 2 Edw. 7, c. 7.
(*tt*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Schedule I: Conveyance of any Stock of the Government of Canada, etc.

is regarded as limiting the *ad valorem* duty on a transfer of a mortgage which is also payable when no beneficial interest passes (*u*).

(3) Section 106 of the Stamp Act, 1891 (*a*), provides that no more than one instrument used for effecting the settlement of the same property is to be charged with *ad valorem* duty, and that those not so charged are to be charged with a duty of 10s.

(4) Section 7 of the Revenue Act, 1903 (*b*), provides that the duty on a substituted or collateral security (which will be considered later in this Article in connection with mortgages) is to be limited to 10s. By an extra-statutory concession this limit is extended to the duty on a transfer of such a security, when it is transferred together with the primary security (*c*). In the case of land, an adjudication stamp seems necessary for purposes of title.

III Conveyance on Sale

Rate of Duty

Subject to certain exemptions and reduced rates considered later, *ad valorem* duty is payable upon every conveyance of property on the sale thereof at the rate of £2 per cent. of the amount or value of the consideration (*d*). The rate was fixed at 10s. per cent. by the Stamp Act, 1891 (*e*). This duty was (subject to an exception in favour of conveyances where the consideration is not more than £500) doubled in respect of all property except stock and marketable securities (*f*) by section 73 of the Finance (1909–10) Act, 1910 (*g*). The duty on transfers of stock and marketable securities was doubled by section 36 (1) of the Finance Act, 1920 (*h*), and was thus brought into line with transfers of other property save that the exception in favour of cases where the consideration was less than £500 applied only to such other property. All the duties (with the same exception) were doubled again by

(*u*) See *Martin* v. *I. R. C.* (1930) 15 A.T.C. 631; the reference to a 6d. stamp in the judgment in this case must mean a stamp calculated at the then appropriate rate of 6d. per cent.

(*a*) 54 & 55 Vict. c. 39.

(*b*) 3 Edw. 7, c. 46.

(*c*) See Appendix to 93rd Annual Report of Commissioners of Inland Revenue (Cmd. 8109).

(*d*) For particulars of the steps by which the duty rises reference must be made to a table of duties.

(*e*) 54 & 55 Vict. c. 39, Schedule I: Conveyance on Sale of any Property [except certain Dominion and Colonial Stocks].

(*f*) The definition of "stock" and "marketable security" will be considered in a later article.

(*g*) 10 Edw. 7, c. 8.

(*h*) 10 & 11 Geo. 5, c. 18.

section 52 of the Finance Act, 1947 (*l*), with an exception in favour of conveyances to charities (*m*), and with total or partial exemption from this increase in cases of transfers of property other than stock and marketable securities where the consideration does not exceed the sums of £1,500 (now increased to £3,000) or £1,950 (now increased with a modification in the partial exemption to £3,450) as the case may be (*n*). The result is that the effective rate in most cases is now £2 per cent.; but except for transfers of stock and marketable securities reduced rates are applicable where the consideration does not exceed £500, £3,000 or £3,450 as the case may be. The conveyance must contain the so-called appropriate certificate of value for these reduced rates to apply (*o*).

Where more than one instrument is needed to perfect the purchaser's title *ad valorem* duty is payable on the principal instrument only (*p*).

A conveyance on sale is one of the instruments in the table in section 15 (2) of the Act under which a penalty of the amount of the duty is imposed for stamping more than thirty days after execution in the United Kingdom, or after the instrument is first received in the United Kingdom, and a fine of £10 is imposed on the purchaser for failure to stamp.

Meaning of "Conveyance on Sale"

A conveyance on sale is defined as including every instrument, and every decree or order of any court or of any commissioners, whereby any property, or any estate or interest in any property on the sale thereof is transferred to or vested in a purchaser or any other person on his behalf or by his direction (*q*). The first essential element of a conveyance on sale is that there must be a sale. In ordinary parlance a sale implies a price in money. If the "price" is in goods or property it is an exchange. But provision is made for valuing the consideration where it consists of any stock or security (marketable or non-marketable) (*r*). Thus

(*l*) 10 & 11 Geo. 6, c. 35.

(*m*) *Ibid.*, s. 54 (1).

(*n*) *Ibid.*, s. 54 (3) as amended by the Finance Act, 1952 (15 & 16 Geo. 6 & 1 Eliz. 2, c. 33), s. 73.

(*o*) See *post*, p. 500*p*.

(*p*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 58 (3); as to what is the principal instrument, see *ibid.*, s. 61, paras. (a) and (b) of subs. (1) of which (relating to copyholds) were repealed by Finance Act, 1949 (12 & 13 Geo. 6, c. 47), s. 52, and Schedule XI.

(*q*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 54.

(*r*) *Ibid.*, s. 55. The definition of "stock" and "security" will be considered in a later article.

Lindley L.J. said : " I do not know what is necessary to constitute a sale, except a transfer of property from one person to another for money or, for the purpose of the Stamp Act, for stock or marketable [*sic*] securities " (*s*). It follows also from another section that a transfer of property in consideration of a debt due to the transferee, or subject to the payment of any money or stock, is also to be regarded as a conveyance on sale (*t*). It is not necessary that the consideration be paid or be wholly paid to the vendor (*u*).

So long as the proper element of consideration necessary to constitute a sale is present it will be found that a very wide range of transactions are regarded as conveyances or transfers. In particular there is considered to be a transfer of an interest in property if such interest is carved out of the property of the transferor and given to the transferee, as by a declaration of trust (*a*). Thus, instruments effecting the following transactions are or may be liable to be stamped as conveyances on sale :—

(1) **Foreclosure orders.** These are now declared by statute to be conveyances on sale (*b*).

(2) **Partnership agreements.** Where a sole trader takes in a partner who pays him cash and gets a share in the business, the articles of partnership will operate as a conveyance on sale of the share of the business obtained by the incoming partner. If, however, he merely brings in capital, the consideration is the interest in such capital that is acquired by the former sole trader. This is not the same as cash and no sale takes place. If the new partner brings in and the former sole trader withdraws capital there may on the facts be sale. There are, of course, unlimited variations on this theme.

(3) **Dissolution agreements.** When, at the end of a partnership, one of the partners receives a sum of money from the others and leaves the partnership, the deed of dissolution constitutes a clear conveyance on sale of his share to the continuing partners and is stamped as such (*c*). If, however, the money paid to the

(*s*) *John Foster & Sons* v. *I. R. C.* [1894] 1 Q.B. 516, at p. 528. As a result of this an exchange of stock or securities is liable to stamp duty as a sale: *J. & P. Coats, Ltd.* v. *I. R. C.* [1897] 2 Q.B. 423.

(*t*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 57.

(*u*) *Ibid.*; *M'Innes* v. *I. R. C.*, 1934 S.C. 424.

(*a*) *Chesterfield Brewery Co.* v. *I. R. C.* [1899] 2 Q.B. 7.

(*b*) *I. R. C.* v. *Tod* [1898] A.C. 399; Finance Act, 1898 (61 & 62 Vict. c. 10), s. 6. The section is declaratory of the law and therefore retrospective: *Re Lovell & Collard's Contract* [1907] 1 Ch. 249.

(*c*) *Christie* v. *I. R. C.* (1866) L.R. 2 Ex. 46.

outgoing partner is money previously forming part of the assets of the partnership, then the arrangement is a partition and not a sale (*d*).

(4) **Receipts.** Possibly as a means of escaping the consequences of the dissolution cases, certain partners executed an elaborate dissolution agreement which recited that the land and chattels of the partnership were in the possession of the outgoing partner, and that the continuing partner had given the outgoing partner a promissory note for the amount of his share in the partnership and released the continuing partner from all claims by the outgoing partner. The partnership land had, as was recited, been conveyed by a separate instrument on which duty was paid. The intention of the parties was to escape duty on such property as did not require to be formally transferred. In this they failed (*e*), and the court, following an earlier receipt case (*f*), held the agreement to be a conveyance on sale. It must be pointed out, however, that there are several cases in which similar receipts have been held not to be conveyances (*g*), and in the most recent case on the subject the majority of the Court of Appeal took the view that the receipt before it was to be stamped as an agreement for sale rather than as a conveyance on sale (*h*). In that particular case this did not affect the rate of duty, as the receipt in question was held liable to duty as an agreement for sale (*l*). As the interest of a partner in partnership assets is an equitable interest (an agreement for the sale of which is always to be stamped as a conveyance (*m*)), and as an equitable interest can only be transferred by instrument in writing (*n*), the avoidance of stamp duty by the device of a receipt is not too easy. It is, however, suggested in Lindley on Partnership (*o*) that all the continuing partners need from the outgoing partner is a receipt for a sum of money (which represents but is not stated to represent the value of his share of the assets), and a discharge from all liability to the outgoing partner. An instrument doing this could hardly want an *ad valorem* stamp.

(*d*) *McLeod* v. *I. R. C.* (1885) 12 R.(Ct. of Sess.) 1045.

(*e*) *Garnett* v. *I. R. C.* (1899) 81 L.T. 633.

(*f*) *Horsfall* v. *Hey* (1848) 2 Ex. 778.

(*g*) *R.* v. *Ridgwell* (*Inhabitants*) (1827) 6 B. & C. 665; *Don Francesco* v. *De Meo*, 1908 S.C. 7.

(*h*) *Fleetwood-Hesketh* v. *I. R. C.* [1936] 1 K.B. 351.

(*l*) Under Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59; to be considered later in this article.

(*m*) *Ibid.*

(*n*) Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 53 (c).

(*o*) 11th ed., p. 549.

(5) **Family Arrangements.** A family arrangement is not usually a sale, as the consideration is not cash or stock or securities but the surrender of equitable interests or supposed equitable interests (*p*). But a family arrangement can be a sale (*q*), and it behoves those who seek to avoid stamp duty to negotiate the arrangement with this danger in mind. Moreover, a release or renunciation on sale is expressly referred to the present head of duty (*r*).

(6) **Assents.** An assent or conveyance by a personal representative to give effect to a contract of sale entered into by the deceased (*s*) or, it is suggested, by the personal representatives (*t*), must be stamped as a conveyance on sale notwithstanding section 36 (9) of the Administration of Estates Act, 1925 (*u*). Again, where personal representatives satisfy a pecuniary legacy by appropriating specific assets under the statutory power of appropriation (which in most cases can be exercised only with the legatee's consent), *ad valorem* duty is payable, the transaction being contractual (*a*). It was suggested earlier that this has no application where either the power of appropriation requires no consent or the legatee can demand the appropriation; *ad valorem* duty is not then payable.

(7) **Amalgamations.** The amalgamation of companies almost invariably involves the conveyance of the property of at least one of the companies concerned to another, and that conveyance is usually a conveyance on sale, whether effected by agreement (*b*) or pursuant to an Act of Parliament (*c*) or by Act of Parliament. In the last case mentioned a Queen's printers' copy of the Act of Parliament must be stamped (*d*). A wide measure of relief from duty on amalgamations and reconstructions is afforded by section 55 of the Finance Act, 1927 (*e*). The amalgamations and transfers

(*p*) *Cormack's Trustees* v. *I. R. C.*, 1924 S.C. 819.

(*q*) *Bristol (Marquess)* v. *I. R. C.* [1901] 2 K.B. 336.

(*r*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Schedule I: Release or Renunciation on Sale.

(*s*) *G. H. R. Co.* v. *I. R. C.* [1943] K.B. 303.

(*t*) This would seem to follow from *Jopling* v. *I. R. C.* [1940] 2 K.B. 282. discussed below.

(*u*) Administration of Estates Act, 1925 (15 Geo. 5, c. 23), s. 41.

(*a*) *Jopling* v. *I. R. C.* [1940] 2 K.B. 282.

(*b*) *Brotex Cellulose Fibres* v. *I. R. C.* [1933] 1 K.B. 158n.

(*c*) *Great Western Railway* v. *I. R. C.* [1894] 1 Q.B. 507; Finance Act, 1895 (58 & 59 Vict. c. 16), s. 12, as amended by Finance Act, 1949 (12 & 13 Geo. 6, c. 47), s. 36 (4).

(*d*) Finance Act, 1895 (58 & 59 Vict. c. 16), s. 12.

(*e*) 17 & 18 Geo. 5, c. 10. This section is to be considered later.

of assets effected by nationalisation (*f*) and denationalisation (*g*) schemes are separately relieved from duty. As will be seen in connection with contracts for sale, these provisions do not afford relief from stamp duty in connection with the conversion of a business into a private company (*h*).

(8) **Declarations of trust.** It has been held that where an agreement for the sale of property contains an express provision that upon payment of the consideration the vendor shall hold the property on trust for the purchaser the agreement is a conveyance on sale (*l*). It would appear, however, that the declaration of trust must be express. In fact it will usually be the case that upon payment of the purchase price the vendor will become bare trustee for the purchaser; indeed he is in some sense a trustee before payment of the purchase price. But it is clear that a bare agreement for sale is not a conveyance on sale (*m*), though it may be liable to the same stamp duty under section 59 of the Stamp Act, 1891 (*n*).

The consideration

In ordinary cases the consideration for the sale (which is the measure of the duty) is a money price paid in one lump sum. This presents no difficulty. If the money is foreign or colonial currency it will be converted into English money at the current rate of exchange, and recital in the instrument of the current rate of exchange will fix it until the contrary is shown (*o*).

If the consideration is inadequate the Revenue may stamp the instrument on the value of the property as a voluntary conveyance (*p*), but it seems that a conveyance on sale stamped in accordance with the consideration shown (not being purely nominal) will be presumed to be validly stamped, so that a subsequent purchaser cannot object to it as a document of title (*q*).

If the consideration consists of the allotment, issue, or transfer of stock or securities, section 55 of the Stamp Act, 1891 (*r*), lays

(*f*) Finance Act, 1946 (9 & 10 Geo. 6, c. 64), s. 52; Finance Act, 1948 (11 & 12 Geo. 6, c. 49), s. 74.

(*g*) *e.g.*, Iron and Steel Act, 1953 (1 & 2 Eliz. 2, c 15), s. 26.

(*h*) As in *John Foster & Sons* v. *I. R. C.* [1894] 1 Q.B. 516.

(*l*) *Chesterfield Brewery Co.* v. *I. R. C.* [1899] 2 Q.B. 7.

(*m*) *I. R. C.* v. *Angus & Co.* (1889) 23 Q.B.D. 579.

(*n*) 54 & 55 Vict. c. 39. This section is considered later.

(*o*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 6. A deliberately false recital would carry liability to a fine under *ibid.*, s. 5.

(*p*) Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 74 (5).

(*q*) *Re Weir & Pitt's Contract* (1911) 55 S.J. 536.

(*r*) 54 & 55 Vict. c. 39.

down the method of valuation which is, in the case of stock and marketable securities (*s*), the current value, and in the case of other securities, the amount due for principal and interest at the date of the conveyance. A question sometimes arises where property is transferred for a given sum of money to be satisfied by the like nominal amount of fully paid shares. Here, as in every other case, it is the actual and not the nominal value of the shares which carries the duty (*t*).

If the consideration is payable by instalments or by periodical payments special provisions apply (*u*). First, where the instalments are payable over a definite (*a*) period not exceeding twenty years, the duty is payable on the total amount payable. Secondly, where the instalments are payable over a definite period exceeding twenty years, or in perpetuity, or for any indefinite period not terminable with life, the duty is payable on the total amount payable over twenty years. Thirdly, where the instalments are payable over a period of a life or lives, the duty is payable on the total amount payable over twelve years. Of course, consideration may be partly payable at once and partly by instalments, in which case duty is assessed on both (*b*). It makes no difference to the rate of duty that the instalments are payable only in contingencies (*c*). It would appear that the Revenue may assess the instrument in the alternative under the head "Bond Covenant or Instrument of any kind whatever" if that should be larger (*d*). It is thought that the provisions for reduced rates of duty where the consideration is less than £3,450 apply where the consideration capitalised in accordance with the above rules is less than £3,450 (*e*).

Where property is conveyed (1) in satisfaction of a debt, or (2) subject either certainly or contingently to the payment or transfer of any money or stock, duty is payable on the amount of the debt or money or the value of the stock. In the case of property transferred in satisfaction of a debt the position is plain. But it is not always understood that, if mortgaged property is sold, duty is paid on the price paid together with the amount

(*s*) The definition of these terms is considered in a later article.

(*t*) *Carlyon Estates* v. *I. R. C.* (1937) 16 A.T.C. 339.

(*u*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 56.

(*a*) A period of a number of years liable to earlier determination on a contingency is not an "indefinite" period: *Mount Edgcumbe (Earl)* v. *I. R. C.* [1911] 2 K.B. 24.

(*b*) As in *M'Innes* v. *I. R. C.*, 1934 S.C. 424.

(*c*) *Underground Electric Ry.* v. *I. R. C.* [1906] A.C. 21.

(*d*) See *British Italian Corporation* v. *I. R. C.* [1921] W.N. 270; more fully reported in Sergeant on Stamp Duties (2nd ed.), p. 318.

(*e*) See *Paul* v. *I. R. C.*, 1936 S.C. 443.

outstanding on the mortgage (liability for which is assumed by the purchaser) (*f*), or that where a business is purchased, the purchaser undertaking to discharge the business debts of the vendor, the amount of these debts will be added to the consideration. The latter duty is commonly avoided by a clause that the purchaser shall collect book debts as agent for the vendor and apply them in discharging the debts of the vendor, the purchaser keeping the balance (if any). In such a clause it is not safe to add that the purchaser shall make good the deficiency (if any), as this is a contingent undertaking to discharge the whole. It has been said that the amount on which duty is assessed should not exceed the value of the property (*g*), and this may be important where the debt in question is a bad debt (*h*), and a small amount of property is being accepted in full satisfaction. Liabilities which are inherent in property, such as rent on a lease or uncalled liability on shares, are not taken into account (*l*).

In certain cases it becomes necessary to apportion consideration between the various items or parcels of property involved in a conveyance or, more often, in a contract. Section 58 of the Stamp Act, 1891 (*m*), provides for this in several cases, as where property agreed to be bought for one sum is conveyed in several parcels or to different persons. In such cases apportionment is necessary, but the method of apportionment does not, or at least does not more than marginally, affect the total of duty payable. The section goes on to provide that where the original purchaser sub-sells without taking a conveyance, the conveyance giving effect to the sub-sale, or (where more than one) to each sub-sale, shall be stamped in accordance with the consideration paid by the sub-purchaser, or each sub-purchaser if more than one. In this connection a real question of apportionment affecting the amount of duty arises in the case where the original purchaser sub-sells part and takes a conveyance of the rest. Duty on the conveyance to him must be paid on an apportioned part of the original purchase price he agreed to pay (*n*), not on the difference between that price and the amount paid by the sub-purchasers.

(*f*) It is not a condition of liability to the charge to duty that the purchaser assume personal liability if it is charged on the property: *City of Glasgow Bank (Liquidators)* v. *I. R. C.* (1881) 8 R.(Ct. of Sess.) 389.

(*g*) *Huntingdon* v. *I. R. C.* [1896] 1 Q.B. 422, at p. 428, *per* Wright J.

(*h*) The fact that a debt is regarded as bad is not otherwise taken into account: *I. R. C.* v. *North British Ry.* (1901) 4 F.(Ct. of Sess.) 27.

(*l*) *Swayne* v. *I. R. C.* [1899] 1 Q.B. 335. It is suggested that road charges under the Private Street Works Act, 1892 (55 & 56 Vict. c. 57), by virtue of s. 14 of that Act fall into this category.

(*m*) 54 & 55 Vict. c. 39.

(*n*) *Maples* v. *I. R. C.* [1914] 3 K.B. 303.

Another important case in which consideration must be apportioned is in connection with contracts assessable to duty as conveyances on sale (*o*). Here some items do, and others do not, attract duty. If the parties set out their own apportionment in the contract it must be a bona fide apportionment (*p*). If too big a part of the consideration is attached to what can be transferred by delivery, and too small a consideration to the remainder, the Revenue may be able to assess the transfer of the remainder as a voluntary conveyance (*q*).

The property

Almost any property can be the subject of a conveyance on sale and attract duty by being included in it. But it must be a genuine property. An exclusive licence to do that which no person has a power to grant an exclusive licence to do is not property and cannot be the subject of a conveyance on sale (*r*). It has been held that a policy of insurance under which no loss has occurred is not property (*s*); it is suggested, however, that unless at the material date the risk is at an end, a policy of insurance would, like any other chose in action (*t*), be regarded as property. Goodwill is property for the purpose of the charge to duty, and it has been held that an agreement to discontinue business in an area and to assist one's successors to obtain the necessary licences to carry on a like business and not to compete for a money payment was an agreement for the sale of goodwill (*u*).

It will be convenient to refer to one or two special classes of property which may be the subject of a conveyance on sale.

(1) **Land.** Subject to exceptions a legal estate in land can only be conveyed by deed (*a*); it is thus peculiarly the subject of conveyances on sale. It is to be noticed that on a conveyance on sale of the fee simple of land, or of a lease of land for seven years or more, the instrument must be "produced" to the Commissioners and a stamp denoting that it has been so produced stamped on

(*o*) Under Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59, which is considered later.

(*p*) *West London Syndicate* v. *I. R. C.* [1898] 2 Q.B. 507, at p. 526.

(*q*) Under Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 74 (5).

(*r*) *Limmer Asphalte Paving Co.* v. *I. R. C.* (1872) L.R. 7 Ex. 211.

(*s*) *Blandy* v. *Herbert* (1829) 9 B. & C. 396.

(*t*) *Western Abyssinian Syndicate* v. *I. R. C.* (1935) 14 A.T.C. 286.

(*u*) *Eastern National Omnibus Co.* v. *I. R. C.* [1939] 1 K.B. 161. It will be appreciated that an agreement not to compete is only valid when annexed to such a contract as the sale of goodwill. An agreement not to compete in consideration of a mere money payment is void; *Vancouver Malt and Sake Brewing Co.* v. *Vancouver Breweries, Ltd.* [1934] A.C. 181.

(*a*) Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 52.

it (*b*). This will normally be done at the same time as the instrument is stamped. The object of the provision is to give the authorities information about land values, but the instrument is not admissible in evidence without this denoting stamp even if there is an adjudication stamp (*c*).

In certain cases contracts for the sale of land are combined with other arrangements, and a question arises whether the consideration for the other arrangements is or is not part of the price of the land. For instance, if land is purchased and at the same time money is paid to a builder who has built a house on it representing payment for the building of the house, the question arises whether the payment to the builder is part of the consideration. The answer to this question is that it is clearly part of the consideration if the building is complete before there is any contract to buy the land (*d*). Conversely if the land is conveyed before the building is begun it is no part of the consideration (*e*). It would appear that it is also no part of the consideration if there is a contract of sale before the house is built (*f*). It is thought that if the house is half completed the consideration paid for building it must be apportioned, and part appropriated to the price of the half-erected building and part to the contractor to build further.

Another case where such a question arises is on compulsory purchase where compensation is paid for severance. It has been the practice of the Revenue not to assess duty on this compensation. Recently, however (April, 1953), they have announced their intention of claiming such duty. Whether or not this claim is well founded, they are prepared to adjudicate as properly stamped all conveyances stamped in accordance with the former practice (*g*).

(2) **Goods.** Goods are transferable by delivery but duty is payable on them if they are included in an instrument of transfer (*h*). They should therefore always be excluded from the transfer. There is no objection to including them in the contract.

(3) **Stock and marketable securities.** Stock and marketable securities (the definition of which will be considered later) include most (if not all) shares and debentures. Companies incorporated

(*b*) Finance Act, 1931 (21 & 22 Geo. 5, c. 28), s. 28. A similar obligation was imposed by Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 4 (1), and repealed by Finance Act, 1923 (13 & 14 Geo. 5, c. 14), s. 38.

(*c*) Finance Act, 1931 (21 & 22 Geo. 5, c. 28), s. 28 (4).

(*d*) *M'Innes* v. *I. R. C.*, 1934 S.C. 424.

(*e*) *Kimbers* v. *I. R. C.* [1936] 1 K.B. 132.

(*f*) *Paul* v. *I. R. C.*, 1931 S.C. 443.

(*g*) See [1953] 4 C.L. § 398a.

(*h*) *Eastbourne Corporation* v. *Att.-Gen.* [1904] A.C. 155, at p. 156.

under the Companies Acts may not register transfers of shares or debentures unless an instrument of transfer is presented (*l*). Stock and marketable securities differ from other property in that the reduced rates applicable to conveyances for consideration not more than £3,450 do not apply to them, and in that they may appear on both sides of the bargain, either as the property transferred or as the consideration for the sale. The transfer on sale of certain Dominion and Colonial Stocks bears the lower rate of 10s. per cent. (*m*), and the transfer on sale of Local Authority Stock issued after the beginning of the year 1953 bears the lower rate of £1 per cent. (*mm*).

(4) **Mortgages.** A transfer of a mortgage is, as will be seen, subject to duty at the rate of 1s. per cent. on the amount secured (*n*). Where value is given for the transfer only this duty is claimed, as the Revenue do not claim to treat it as a conveyance on sale (*o*).

(5) **Annuities.** It is expressly provided by the Stamp Act that where an annuity or other right not previously in existence, and not created by any grant or conveyance but secured by a bond, covenant, contract or otherwise, the bond or instrument (or one of them if more than one) is to be stamped as if it were a conveyance on sale (*p*). This section charges with duty the common form of agreement for the purchase of an annuity for life or other period for a cash sum or for stock or marketable securities (*q*), but not for any other property (*r*). Moreover, the purchase of a perpetual annuity (even if described as a borrowing) is charged under this section and not as a mortgage (*s*). Conversely to this, a transaction described as the purchase of an annuity, but which merely amounts to the repayment of the money paid with interest by instalments, is not taxable under this head (*t*) but under the provisions relating to mortgages (*u*).

(*l*) Companies Act, 1948 (11 & 12 Geo. 6, c. 38), s. 75.

(*m*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Schedule I: Conveyance or Transfer No. (2); Finance Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 34), s. 28. The original duty was doubled once by Finance Act, 1920 (10 & 11 Geo. 5, c. 18), s. 36 (2), and again by Finance Act, 1947 (10 & 11 Geo. 6, c. 35), s. 52, Schedule I: Mortgage Bond Debenture Covenant No. (4).

(*mm*) Finance Act, 1953 (1 & 2 Eliz. 2, c. 34), s. 31 (2).

(*n*) Stamp Act, 1891 (54 & 55 Vict. c. 39).

(*o*) See the argument of counsel for the Revenue in *Anderson* v. *I. R. C.* [1939] 1 K.B. 341, at p. 343.

(*p*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 60.

(*q*) *Faber* v. *I. R. C.* [1936] 1 All E.R. 617.

(*r*) *Blandy* v. *Herbert* (1829) 9 B. & C. 396. This case only decides that such a transaction is not the sale of an annuity. It might be liable as a conveyance on sale or agreement to sell the property in consideration of the annuity.

(*s*) *Mersey Docks and Harbour Board* v. *I. R. C.* [1897] 2 Q.B. 316.

(*t*) *Commercial Union Assurance Co.* v. *I. R. C.* [1938] 2 K.B. 551.

(*u*) Stamp Act, 1891 (54 & 55 Vict. c. 39), Schedule I: Mortgage Bond Debenture Covenant, s. 87 (2).

(6) **Foreign property.** A conveyance of property situated abroad requires to be stamped if it is executed in the United Kingdom, or relates to any property situated, or thing done or to be done, in the United Kingdom (*a*). For example, a transfer of property in France was held to require a stamp where the consideration was the issue of shares in an English company (*b*).

Agreements stamped as conveyances

It was held in the case of *I. R. C.* v. *Angus* (*c*) that an agreement for sale is not a conveyance on sale. In consequence of this decision Parliament, no doubt realising that goodwill and other types of property are never normally actually conveyed, had section 59 included in the Stamp Act, 1891 (*d*). Under this section as amended (*e*) any agreement or contract for the sale of (1) any equitable estate or interest in any property whatever, or (2) any estate or interest in any property except (a) land, (b) property outside the United Kingdom, (c) goods, (d) stock and marketable securities, or (e) ships, is liable to duty as if it were an actual conveyance on sale. The section further provides that a conveyance in conformity with the contract, or to a sub-purchaser, shall bear only the duty appropriate to the contract (6d. or 10s.) plus any duty appropriate to any excess consideration paid by the sub-purchaser (*f*), and that the conveyance shall have the duty paid on the contract denoted on it or transferred to it (*g*). If the contract is stamped only with the fixed duty of 6d. or 10s. appropriate to it apart from the section it will suffice for an action for damages or specific performance (*h*), and it will be treated as sufficiently stamped for all purposes if, within six months or such longer period as the Commissioners may think reasonable, a conveyance in conformity with the contract is presented for stamping and duly stamped (*l*). The duty is returnable if the contract is rescinded or annulled or for any other reason is not substantially performed (*m*).

A number of problems have come before the courts on this

(*a*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 14. Transfers of shares in companies incorporated under the Companies Acts being shares registered on a Dominion Register require a stamp only if the transfer is executed in the United Kingdom: Companies Act, 1948 (11 & 12 Geo. 6, c. 38), s. 121.
(*b*) *I. R. C.* v. *Maple & Co. (Paris), Ltd.* [1908] A.C. 22.
(*c*) (1889) 23 Q.B.D. 579.
(*d*) 54 & 55 Vict. c. 39.
(*e*) By Revenue Act, 1909 (9 Edw. 7, c. 43), ss. 9, 12 (2), Schedule.
(*f*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59 (2).
(*g*) *Ibid.*, s. 59 (3).
(*h*) *Ibid.*, s. 59 (4).
(*l*) *Ibid.*, s. 59 (5).
(*m*) *Ibid.*, s. 59 (6).

section. Important among the points of principle decided are (1) that the words of exception do not qualify the words "equitable estate or interest" (*n*), so that, for instance, an agreement for the sale of an equitable interest in property abroad requires a stamp if it falls within section 14(3) of the Act, as having been executed in the United Kingdom or as relating to something to be done there; (2) that an agreement to hold property on trust for someone in consideration for a sum of money, or for stock or marketable securities, is an agreement for the sale of an equitable interest within the section (*o*); (3) that a memorandum of an agreement within the section requires to be stamped in accordance with it (*p*); (4) that goodwill of a business abroad (*q*), and choses in action enforceable only abroad (*r*), are property locally situated outside the United Kingdom.

Although all cash at a bank is strictly in the category of chose in action the Revenue do not in fact claim duty on cash on current account. As all cash at a bank can be transferred without *ad valorem* stamp duty by withdrawal and redeposit, it should not be included in an agreement for sale.

Considerable importance attaches to this section in connection with the formation of companies. It is a common practice to sell an existing business to the company for shares. But section 52 of the Companies Act, 1948 (*s*), requires that, where shares are allotted for a consideration other than cash, then within one month of allotment either (i) a properly stamped contract constituting the title of the allottees, or (ii) if such contract has not been reduced to writing, particulars of such contract stamped in a manner appropriate to a contract must be filed with the Registrar of Companies. There is thus no escaping by dispensing with a contract, but only by selling the business by oral contract for cash and (by exchanging cheques) using the cash to subscribe for the shares. If this method is adopted no contract need be filed (*t*).

(*n*) *Farmer* v. *I. R. C.* [1898] 2 Q.B. 141, at p. 145.

(*o*) *Chesterfield Brewery Co.* v. *I. R. C.* [1899] 2 Q.B. 7.

(*p*) *Fleetwood-Hesketh* v. *I. R. C.* [1936] 1 K.B. 351.

(*q*) *I. R. C.* v. *Muller's Margarine* [1901] A.C. 217.

(*r*) *English, Scottish and Australian Bank* v. *I. R. C.* [1932] A.C. 238. This case overruled a series of cases in which, in spite of the case in note (*q*), it had been held that only tangible property came within the exception.

(*s*) 11 & 12 Geo. 6, c. 38.

(*t*) *Spargo's Case* (1873) L.R. 8 Ch. 407. This practice has received the blessing of authority by being excepted from the limitation on the raising of money by the issue of shares imposed by the Control of Borrowing Order, 1947 (1947 S.R. & O. No. 945), Article 3 (3).

Exemptions and Reduced Rates.

Under the general exemptions from all stamp duties at the end of the First Schedule to the Stamp Act, 1891 (*u*), conveyances on sale of Government securities and of ships are exempt from duty. Other Acts have exempted inter alia certain conveyances of stock and securities to stockbrokers or jobbers holding them pending resale in the course of their business (*a*), transfers of shares in Building Societies (*b*), certain conveyances for the purpose of carrying out schemes of amalgamation and reconstruction (*c*), certain conveyances between associated companies (*d*), and conveyances of certain stocks the interest whereon is guaranteed by the Treasury (*e*), and the first transfer of registered stock or marketable securities after they have ceased since 1939 to be transferable by delivery (*f*). These and other exemptions will be considered later.

In certain cases, however, there is no exemption but a lower rate of duty is payable. First, certain Dominion and Local Authority Stocks carry a lower rate of duty; these have already been dealt with as requiring special mention. Secondly, conveyances to bodies of persons established for charitable purposes only or to trustees of a trust so established are not affected by the doubling of stamp duty introduced by the Finance Act, 1947 (*g*), but an adjudication stamp is required for a conveyance at the lower rate to be treated as properly stamped (*h*). The effective rate for conveyances to charities is thus £1 per cent. with a reduction (save on stock and marketable securities (*l*)) to 10s. per cent. where the consideration is not more than £500 next mentioned. The third case of reduced rate occurs when the consideration is not more than a certain figure and the conveyance contains the appropriate certificate of value as shown below.

(*u*) 54 & 55 Vict. c. 39.

(*a*) Finance Act, 1920 (10 & 11 Geo. 5, c. 18), s. 42.

(*b*) Building Societies Act, 1836 (6 & 7 Will. 4, c. 32), s. 8, as to societies under that Act and Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 41.

(*c*) Finance Act, 1927 (17 & 18 Geo. 5, c. 10), s. 55; amended by Finance Act, 1930 (20 & 21 Geo. 5, c. 28), s. 41.

(*d*) Finance Act, 1930 (20 & 21 Geo. 5, c. 28), s. 42, amended by Finance Act, 1938 (1 & 2 Geo. 6, c. 46), s. 50.

(*e*) Finance Act, 1947 (10 & 11 Geo. 6, c. 35), s. 57.

(*f*) Finance Act, 1944 (7 & 8 Geo. 6, c. 23), s. 44.

(*g*) 10 & 11 Geo. 6, c. 35. See ss. 52, 54. An appeal against the refusal of relief under this head is a convenient means of testing the charitable nature of a trust or institution for all the purposes. As against an income tax appeal it has the merit of by-passing a hearing before the Commissioners. For an example, see *Baddeley* v. *I. R. C.* [1953] Ch. 504.

(*h*) *Ibid.*, s. 54 (1) proviso.

(*l*) The definition of "stock" and "marketable security" will be considered later.

Where the consideration for the conveyance does not exceed £500, and the conveyance contains a statement certifying that the transaction thereby effected does not form part of a larger transaction or series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £500, the rate of duty is 10s. per cent. (*m*); if the consideration (whether more or less than £500) does not exceed £3,000 and the conveyance contains a similar certificate in the sum of £3,000, the rate of duty is £1 per cent. (*n*); if the consideration (whether more or less than £500 or £3000) does not exceed £3,450 and the conveyance contains a similar certificate in the sum of £3,450, the rate of duty is £1 10s. per cent. (*o*).

If the certificate is omitted the Revenue will allow it to be added and signed by the parties who have executed the transfer.

The device of requiring this certificate is rendered effective only by section 5 of the Stamp Act, 1891 (*p*), which imposes a fine on any person who, with intent to defraud Her Majesty, executes or prepares an instrument in which all the facts relevant to the assessment of duty are not fully set forth. The only check on the accuracy of the certificate is thus the bona fides of the parties or their advisers (*q*), and they may well be in doubt as to the propriety of giving a certificate. In most cases no difficulty arises as the transaction stands alone. When it does not, the question whether the two or more transactions form either a larger transaction or a series of transactions is never easy. The following suggestions are therefore put forward in the hope that what has passed through the mind of one wayfarer in an almost uncharted area of the law may be of assistance to others.

(1) In general all other property being transferred by the same transferor to the same transferee as part of the one transaction should be taken into account, however improbable it is that all would be conveyed in one instrument. Thus on the sale of a business including among its assets book-debts, land, and goodwill, the certificate should only be given in the conveyance or agreement for sale relating to any one of these if the aggregate consideration

(*m*) Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 73.

(*n*) Finance Act, 1947 (10 & 11 Geo. 6, c. 35), s. 546; Finance Act, 1952 (15 & 16 Geo. 6 & 1 Eliz. 2, c. 33), s. 73.

(*o*) *Ibid.*

(*p*) 54 & 55 Vict. c. 39.

(*q*) *Att.-Gen.* v. *Cohen* [1937] 1 K.B. 478, at pp. 482 and 490. On the latter page Greene L.J. suggested that the legislature can scarcely be supposed to have intended to compare parties with questions on which there might well be acute differences of opinion.

is less than the figure named in the certificate. By statute, however, " goods wares and merchandise " may be omitted from consideration (*r*). The statutory provision in question confirms the view that other property should be included.

(2) It has been held that two properties purchased by one vendor from one purchaser at the same auction are independent transactions (*s*).

(3) It is submitted that a simultaneous related transaction, not itself a sale, may be disregarded. In the case of *Kimbers & Co.* v. *I. R. C.* (*t*) a contract by a vendor to sell land for less than £500 and, conditional upon the completion of the sale, to build a house on it for a figure exceeding £500 came before the courts. The contest in the case was over the question whether the further consideration attracted stamp duty, and it was held that it did not. The conveyance in question contained a certificate that it was not part of a larger transaction and no suggestion was made that its inclusion was improper. When it is considered that the object of requiring a certificate is to prevent the avoidance of duty by artificial breaking up of transactions, this seems right.

(4) For the same reason, it is submitted that where the vendors are not identical or associated or the purchasers are not identical or associated in each or all of the relevant transactions, those at any rate in which both vendor and purchaser are not identical may be disregarded, even though the transactions are associated, *e.g.*, if a purchaser subsells part of the property he has contracted to purchase, the sub-purchaser would feel aggrieved if he did not get a certificate of value. Similarly, it is not a case of a series of transactions for the purpose of these provisions if one purchaser buys from several different vendors even if each contract of sale was conditional on the fulfilment of the others. This view is supported by the observations of Greene L.J. in *Att.-Gen.* v. *Cohen* (*u*). But in *R. J. Reuter, Ltd.* v. *Mulhens* (*w*), Evershed M.R. in questioning the propriety of a certificate of value suggested that a distinction should be drawn between " a larger transaction " and " a series of transactions." It is respectfully

(*r*) Finance Act, 1949 (12 & 13 Geo. 6, c. 47), s. 36.

(*s*) *Att.-Gen.* v. *Cohen* [1937] 1 K.B. 478.

(*t*) [1936] 1 K.B. 132. See also *Paul* v. *I. R. C.*, 1936 S.C. 443, where this question was specifically raised and apparently answered as indicated above.

(*u*) [1937] 1 K.B. 478, at p. 491.

(*w*) [1953] 3 W.L.R. 789, at pp. 809–810. The certificate in question (to which the Board of Trade and the Custodian of Enemy Property were parties) was contained in one of two transfers by the Custodian to different transferees, one of whom was, when the two transfers were complete, the wholly-owned subsidiary of the other. The transferees were thus associated.

suggested that this distinction is likely to confront parties with difficult questions of the type deprecated in the passage referred to in note (*q*). Unless the parties are identical or at least associated in each of the transactions concerned there can be no suggestion that the transaction has been artificially split up.

(5) Where equality money is paid on a partition the certificate may be given. Where it is paid on exchange the certificate may only be given after taking into account the value of the property (other than goods (*a*)) given in exchange by the person paying the equality money.

(*a*) Which may be disregarded under Finance Act, 1949 (12 & 13 Geo. 6, c. 47), s. 36.

(To be continued)

NOTES OF RECENT CASES

1. *LAW OF PROPERTY AND CONVEYANCING*

By S. M. Tolson, Barrister-at-Law

Tithe Redemption Commission v. *Runcorn Urban District Council* [1953] 3 W.L.R. 845; [1953] 2 All E.R. 1303

Tithe redemption annuity—highway authority—"estate owner"—Tithe Act, 1936, *s.* 17 (1) (3)—*Law of Property Act*, 1925, *ss.* 7 (1), 205 (1) (v) *and* (ix).—Danckwerts J. here had to decide the interesting question of whether a highway authority in whom a highway is vested by statute is the "estate owner" within section 17 (1) of the Tithe Act, 1936, so as to be liable to contribute together with the owner of the surrounding and subjacent land, to the payment of tithe redemption annuity under an apportionment made under section 10 of that Act.

It is of course clear that the highway authority's interest in the land is confined to the highway itself and so much of the soil and airspace respectively below and above the highway as may be necessary for the authority to carry out its duties. (*The Mayor, etc., of Tunbridge Wells* v. *Baird* [1896] A.C. 434.) It is also clear that when a highway ceases to be such owing to operation of law, the authority's interest in the land determines. (*Rolls* v. *Vestry of St. George the Martyr* (1880) 14 Ch.D. 785.) By section 17 (1) and (3) of the Tithe Act, 1936, the owner of land for the purposes of the Act is the estate owner in fee simple as defined by the Law of Property Act, 1925, but section 205 of the latter Act, though it makes it clear that "land" may be divided horizontally (ss. (1) (ix)) merely defines an "estate owner" as the owner of a legal estate (ss. (1) (v)). Since 1925 legal estates are of course confined to a fee simple absolute in possession and a term of years absolute, and the real question therefore before Danckwerts J. was whether a highway authority's interest is in fact a fee simple absolute in possession though at some future time it is liable to determine by operation of law.

The learned judge came to the conclusion that the interest is a fee simple determinable, which by section 7 (1) of the Law of Property Act, 1925, is a legal fee simple. He said that the Highway Acts are "similar" to the Lands Clauses Acts and the School Sites Acts mentioned in section 7 (1) in that while they do not contain express provisions for reverter, they have been held by case law to vest interests in fee simple determinable in highway authorities. As the learned judge observed it would be extremely unfortunate if section 7 were so construed that a highway authority had no legal estate at all.

The defendant authority was therefore held liable to contribute.

Christie Owen & Davies, Ltd. v. *Stockton*
[1953] 1 W.L.R. 1353; [1953] 2 All E.R. 1149

Estate agent's commission—payable if "offer" accepted "by a person able and willing to enter into a formal contract."—The words used in this estate agent's contract were not substantially similar to those used in any case yet reported. Commission was payable by the owner firstly "in respect of any completed transaction pertaining to the . . . premises" and secondly "should the owner withdraw after having accepted an offer to purchase by a person able and willing to enter into a formal contract. . . ." The plaintiffs were relying upon the second head as a mutual arrangement had been made "subject to contract," and the contracts had never been exchanged. It was never disputed that the proposed purchaser was not able to purchase.

Slade J. said that the first head was relevant being used in contra-distinction to the second, and it meant that the commission should be payable when the right to the property had passed to the purchaser in equity. As regards the second head the learned judge said that "offer" meant an offer "capable of being turned into a contract by acceptance," as distinguished from a mere proposal in the negotiations. (See *per* Evershed M.R. in *Bennett Walden & Co.* v. *Wood* [1950] 2 All E.R. 134 at p. 136.) Also, on the authority of *Graham & Scott (Southgate), Ltd.* v. *Oxlade* [1950] 2 K.B. 257 (and see *per* Cohen L.J. *ibid.* at p. 265), Slade J. found that a purchaser "willing to enter into a formal contract," did not include one who agreed to purchase subject to contract, unless the contracts had actually been exchanged. (*Eccles* v. *Bryant & Pollock* [1948] Ch. 93.) Therefore as the "offer" had been made "subject to contract," and as the contracts had never been exchanged the plaintiffs were not entitled to their commission.

The learned judge came to the conclusion that the condition contained in the second head covered a contract which is unenforceable owing to lack of a sufficient memorandum. In such a case there is a firm offer coupled with acceptance of the offer by a person who has shown his willingness to enter into a contract the terms of which are, *ex hypothesi,* already agreed though not yet reduced to writing. Also it is only from an unenforceable contract that a vendor may correctly "withdraw."

Slade J. in giving judgment for the defendant, emphasised that it should be stated in the clearest possible terms if the commission is to be payable when the matter has not proceeded beyond mere negotiation, though he himself found it difficult to see how this could be done. It is indeed difficult to see how the onus of having "withdrawn" (which in the agent's interest must fall on the owner), can be determined when the negotiations go off simply because the parties fail to agree.

Southgate Borough Council v. *Park Estates (Southgate), Ltd.*
[1953] 1 W.L.R. 1274; [1953] 2 All E.R. 1008

Private street works—"unreasonable"—Private Street Works Act, 1892, *s.* 7 (d).—The Divisional Court of the Queen's Bench Division

decided that justices when considering objections to proposed street works under section 7 (d) of the Private Street Works Act, 1892, are entitled, where the proposed works are alleged to be unreasonable, to have regard to the scheme as a whole and to decide whether it is reasonable that the proposed works should be done at all, and, therefore, whether it is reasonable that they should be done at any particular time.

The position was that the appellant council had resolved to execute street works and had approved the work to be done. The respondents who owned premises liable to be charged with part of the expense of executing the works had obtained a licence to build on adjoining land, and objected to the proposed works on the ground that the newly made up road would have to be cut into to provide the new houses with the usual public services. They contended that the work was premature and therefore unreasonable.

The court found that in deciding the meaning of "unreasonable" in section 7 (d), they were bound by their own longstanding decision in *Mansfield Corporation* v. *Butterworth* [1898] 2 Q.B. 274, where Wills J. said that "unreasonable" in section 7 (d) had a wider meaning than the word "insufficient" in the same heading. (See Croasdell on Private Street Works, 2nd ed., at p. 84.) For this reason, the justices are entitled to have regard to the scheme as a whole in coming to their decision, and not merely to the objects proposed to be effected by the works.

The result in the instant case was that the justices could, without implying anything as to the future, decide that it was unreasonable that the work should be done at the time proposed.

Southport Corporation v. *Esso Petroleum Co., Ltd.*
[1953] 3 W.L.R. 773; [1953] 2 All E.R. 1204

Damage to foreshore—rights of owner.—This case, though not dealing with property law directly, is of general interest to property owners and covers an entirely new field in the law of nuisance. Devlin J. decided that in the absence of negligence, the owner of property adjoining a navigable river has no right of action in nuisance or trespass for damage done to his property by a vessel using the river. The facts were that the defendants' tanker became stranded owing to defective steering gear, and in order to refloat her and prevent loss of life, the master ordered the cargo of oil to be jettisoned. The oil was carried down the river to sea and came to the plaintiffs' foreshore causing considerable damage.

In considering the defendants' liability for nuisance the learned judge said that there was no rule that a nuisance must emanate from land belonging to the defendant, but that a person is liable if he misuses any public land or waterway so as to cause a nuisance. Both Clerk and Lindsell (10th ed. at p. 591) and Winfield (5th ed. at p. 464) support this, though the point is not covered exactly by any precedent. Also in cases such as these the learned judge said that the plaintiff's right of action does not depend upon his property being contiguous to

the public highway or waterway, but upon whether his property was sufficiently proximate to the highway to be affected by its misuse by the defendant.

Devlin J. did not in fact decide whether in the instant case the damage was direct and a trespass, or indirect and a nuisance, for he held that in order to succeed, as in the case of accident on the highway, the plaintiff must prove negligence on the part of the defendant. The dicta of Lord Blackburn in *River Wear Commissioners* v. *Adamson* (1877) 2 App.Cas. 743 at p. 767 and in *Fletcher* v. *Rylands* (1866) L.R. 1 Ex. 265 at p. 286, upon which the rule for highway accidents is based, specifically refer to collisions in navigable rivers, and Devlin J. said that in his opinion the principle was not restricted to direct injury but applied also to liability for nuisance.

Therefore, though the defendants were prima facie liable for nuisance or trespass the action against them failed as the plaintiffs had not proved negligence.

Billing v. *Pill* [1953] 3 W.L.R. 758; [1953] 2 All E.R. 1061

Temporary army hut not a fixture.—The divisional court decided that a temporary army hut made in seven sections and bolted on to a concrete foundation was not "attached to or forming part of the realty" within section 1 (3) of the Larceny Act, 1916, but was a chattel capable of being stolen in the ordinary way. Lord Goddard C.J. referred to the law of fixtures as stated in Halsbury's Laws of England (2nd ed., Vol. 20, para. 107), and emphasised that the hut had been erected merely for a temporary purpose. It was, he said, no more attached to the realty by being bolted to the concrete than is a garden seat which is held in position by a spike driven into the ground.

---

2. *CHARITIES*

By A. KIRALFY, Barrister-at-Law

Re North Devon and Somerset Relief Fund [1953] 1 W.L.R. 1260

Charity—surplus—cy-près application.—The impressive reaction to the touching tragedy at Lynmouth led to the accumulation of contributions larger than any likely to be required to make good the flood damage there. On the other hand the calls likely to be made on the Lord Mayor's Flood Relief Fund for the greater disaster on the East Coast will exceed the contributions to that fund. Wynn-Parry J. has held that any surplus on the Lynmouth collections may be applied *cy-près* and therefore presumably to the other flood relief purposes. Authorities for the application of the *cy-près* doctrine to surpluses may be found in *Re Buck* [1896] 2 Ch. 727, and *Re Royce* [1940] Ch. 514 (Jarman, 259, 267). Such application is conditional on the existence of a general charitable intention (*Re Welsh Hospital* [1921] 1 Ch.

455) which it was not difficult to find in this case. The underlying motive was compassion for the victims of flood and no contributor expected repayment.

(Theobald 288.)

---

3. *WILLS*

By A. Kiralfy, Barrister-at-Law

Re Gilpin [1953] 3 W.L.R. 746

Will—Construction—Adoption Act, 1950—*transitional provisions.* —Under the old 1926 Adoption Act gifts to "children" did not include adopted children unless a contrary intention appeared. The fact that a testator knew when he made his will that his daughter had adopted a child and was incapable of bearing a child enabled Upjohn J. to hold that such child qualified in this case (*cf. Re Wohlgemuth* [1949] Ch. 12, and more recently *Re Herwin* [1953] 3 W.L.R. 530). But the most interesting part of the decision lies in its interpretation of the transitional provisions of the 1950 Act. The law applicable to a will is usually the law in force at the death. But the Act of 1950 followed the not uncommon policy of refusing to alter the dispositions of a testator by changes of law after the execution of the will. Even the execution of a later codicil does not republish the will so as to attract the new law if the original disposition was executed before the Act (section 14). The wording of section 14 makes it clear that "disposition" means the document and not the legal disposition operating on the testator's death (see Williams, Executors, 13th ed., Vol. 2, p. 565 (3)). Hence the legislature must have meant the new Act to apply only to wills executed after its enactment, and not to the estates of testators dying thereafter. Upjohn J. had no difficulty in holding this, in the light of section 14 which would have been meaningless on any other interpretation. The testator in this case made his will in 1947; his daughter adopted a child in 1941, and the testator died after the 1950 Act came into force.

Re Watkins [1953] 1 W.L.R. 1323, at 1331

Inheritance (Family Provision) Act, 1938—*measure of award.*—In this case provision was applied for under the 1938 (not 1952) Act. The maximum provision was one-half the income of the estate, *i.e.*, £300. The actual provision in the will was £2 a week. Harman J. raised this to £4 per week as the widow had only been married to the testator for three years and had been his housekeeper for the preceding two years.

(Theobald 75.)

Re Heilbronner [1953] 1 W.L.R. 1254

Legacy—change of nature—no ademption.—The testator in this case made a bequest of his bank deposit at the Midland Bank. This was held to pass all balances to his credit at the bank, but not savings bonds or certificates. There was a difficulty because he had in fact withdrawn his balance shortly before his death so that he could deal with the money as he was too ill to sign cheques. Roxburgh J. decided that the legatee was entitled to the withdrawn balance as the original bequest in a different location, on the analogy of bequests of furniture described as being in houses. The decision is very convenient, if one may treat the reference to the deposit as a shorthand description of the money. But it does seem that this case, which the learned judge described as raising a novel point of law, goes very far. Once money is drawn out of the bank it is really changed in nature. It is no longer a debt owed by the bank to the customer but cash in hand, fungible banknotes. Repayment of a debt normally adeems a legacy of the debt. The effect of the decision is to treat the bequest as a bequest of so-much money quantified by the state of the testator's account, rather than as a bequest of a debt since repaid. This would be a general and not a specific legacy, though the doctrine of ademption only applies to specific legacies.

(Theobald 127 (23), 128.)

Practice Direction, May 5, 1953 [1953] 1 W.L.R. 1237

Practitioners are referred to this direction which deals with grants of representation to the estates of deceased persons who had foreign domiciles.

---

4. *LANDLORD AND TENANT CASES*

By J. Muir Watt, M.A., of the Inner Temple, Barrister-at-Law

Warren v. *Keen* [1953] 3 W.L.R. 702; [1953] 2 All E.R. 1118

Weekly tenancy—question of implied duty of weekly tenant to repair—"wind and water-tight."—The Court of Appeal in this case discussed a point of considerable interest and some obscurity in the law of landlord and tenant, namely, the extent of the implied obligation of a tenant (and in particular a weekly tenant) to repair. Some, but not all, the obscurity has been removed. The case was one relating to a controlled weekly tenancy where there was no express obligation to repair. The landlord contended that there was an implied term that the tenant would use the premises in a tenant-like manner, would keep them wind and water-tight, and would make fair and reasonable repairs thereto. The disrepair alleged consisted of such things as

damp and stained plaster on internal walls, a cracked and broken external wall, window-sills not weather-proof and a leak in the hot water boiler. The county court judge, giving judgment for the landlord, held that there was an implied covenant that the tenant would keep the premises in a good and tenantable condition and do such repairs as were necessary to that end. The Court of Appeal reversed this decision. Somervell L.J., accepting for the sake of argument, but without deciding, the proposition of Swinfen Eady L.J. in *Wedd* v. *Porter* [1916] 2 K.B. 91, 100, that a tenant from year to year was under an obligation to do sufficient repairs to keep the premises wind and water-tight, refused to hold that a weekly tenant was under any such obligation. In any case he held that the matters complained of were not within the scope of an obligation to keep " wind and water-tight." They were due to fair wear and tear. Denning L.J. criticised the expression " wind and water-tight " as one of doubtful meaning. He thought that it was better to keep to the simple obligation " to use the premises in a tenant-like manner." In his view the only implied obligation of the tenant is to use the premises in a tenant-like manner. " The tenant must take proper care of the place. He must, if he is going away for the winter, turn off the water and empty the boiler. He must clean the chimneys when necessary, and also the windows. He must mend the electric light when it fuses. He must unstop the sink when it is blocked by his waste. In short, he must do the little jobs about the place which a reasonable tenant would do. In addition, he must, of course, not damage the house, wilfully or negligently; and he must see that his family and guests do not damage it: and if they do, he must repair it. But apart from such things, if the house falls into disrepair through fair wear and tear or lapse of time, or for any reason not caused by him, then the tenant is not liable to repair it." Romer L.J. rested his judgment on the ground that whatever may be the precise extent of the liability of a tenant from year to year, he is not liable for deterioration due to fair wear and tear and, if so, *a fortiori*, a weekly tenant is not so liable.

As so often happens, the judgment of Denning L.J. is more precise than those of his brethren, but it is a question how far it can be relied upon as authoritative. The judgments are helpful to the extent of indicating what a weekly tenant is *not* liable to do. The question what a tenant from year to year is liable to do is still not too clear. It may be noted that Denning L.J. expressed the view that a weekly tenant is not liable for permissive waste.

(Woodfall, 24th ed., p. 719.)

Temple v. *Lewis* [1953] 3 W.L.R. 762

Rent Restrictions Acts—premium paid by third person—limitation period for recovery of premiums.—Two points were raised in this case. The first was whether the right of recovery of premiums given by section 2 (5) of the Landlord and Tenant (Rent Control) Act, 1949, is confined to tenants or extends to cases where the premium has been paid by a third party as principal, and not as the tenant's agent. The

second point was whether the two years' time limit for the recovery of overpayments of rent (section 8 of the 1920 Act) applies to the recovery of premiums, or whether the ordinary six years' period applies to premiums. Both points appear to have been dealt with in county court cases but not hitherto in the Court of Appeal. It was held (1) that the right of recovery was not confined to tenants, but extended to third parties, and (2) that the ordinary six years' limitation period applied. On the second point the court agreed with the reasoning set out on pp. 383–84 of Megarry, 7th ed. The court's views on the first point might be regarded as *obiter* since the county court judge had found (and it was not suggested that he erred in doing so) that the premiums had in fact been paid by the third party as the tenant's agent.

(Megarry, 7th ed., p. 374, pp. 383–84; Rent Restrictions Guide, 3rd ed., p. 72.)

Cowan v. *Wrayford* [1953] 1 W.L.R. 1340; [1953] 2 All E.R. 1138

Agricultural holdings—notice to quit served under section 24 (2) *of* 1948 *Act—question whether effective as a simple notice to quit if reason given is bad—ambiguity.*—This is an important decision under the Agricultural Holdings Act, 1948, and, like other decisions given by the Court of Appeal under the Act, a little surprising. The landlord served a notice to quit under section 24 (2) (d) of the 1948 Act. The ground alleged under section 24 (2) (d) was bad, inasmuch as the time allowed to remedy certain breaches had not expired. The landlord, however, sought to rely on the notice as an effective notice to quit with a bad reason superadded, which would not at common law affect its validity. The tenant, it should be mentioned, had served no notice requiring arbitration in regard to the ground alleged, and had served no counter-notice. The Court of Appeal upheld the county court judge's decision in favour of the tenant. A landlord who serves a notice in accordance with section 24 (2) cannot, if it turns out that the reason alleged in the notice is bad, automatically rely on the notice as a simple notice to quit without reasons. According to Denning L.J. the notice must either be a simple notice without stating reasons, in which case it will operate under section 24 (1), or a notice stating reasons as prescribed by subsection (2), in which case it will operate under that subsection. Somervell L.J., however, said that the landlord could make it clear in the notice to quit that he relied on section 24 (2) but that, should he fail to satisfy section 24 (2), he relied on the notice to quit as a simple notice without reasons. According to Somervell L.J. therefore, it is possible to ride both horses if the intention to do so is plain. A landlord can, if he prefers, serve two distinct notices, one invoking section 24 (2), the other not.

This decision is not entirely without difficulties. It is rather contrary to the view expressed (but now recanted) by Somervell L.J. himself in *Budge* v. *Hicks* [1951] 2 K.B. 339. It requires a little reconciliation with section 26 (1) (a). It also stretches somewhat the

doctrine that a notice to quit must be clear and unambiguous. No doubt the result will be an increase in the practice of framing a notice expressly in the alternative, or, perhaps, serving two notices.

THE LIBRARY

The Law of Agricultural Holdings. By W. S. Scammell. 2nd ed. (xlii and 602 pp.). London: Butterworth & Co. (Publishers), Ltd. (£2 5s. net.)

The first edition of this work was commissioned and published in 1949 jointly by the Royal Institution of Chartered Surveyors and the Chartered Auctioneers' and Estate Agents' Institute. The publication of a second edition has enabled the author to comment on eighty-eight new cases decided since the first edition, and to take into account developments in actual practice of the County Committees and Agricultural Land Tribunals in working the Agriculture Act, 1947, and the Agricultural Holdings Act, 1948. The fact that the author is mainly addressing valuers and land agents need not deter the legal professions. Those lawyers who already have a working knowledge of the Acts and the many Statutory Instruments made by the Minister will find that the author does not shrink from giving his opinion on the many difficult points of interpretation that arise, and that he has not overlooked any case new or old that is likely to prove helpful. Even county court decisions have not slipped through his net, and these often provide useful arguments where High Court decisions are lacking. For those practitioners who only occasionally have to explore the Acts, the fact that the book is written not as a mere commentary on the sections one by one, but as a genuine attempt to explain the Acts both as a whole and also in detail, should make it a very handy and reliable guide. All the more so because one of the eight very useful appendices contains a reprint of the more important regulations, while others list the jurisdictions or discretions of the Minister, the Agricultural Land Tribunal, the County Committee and the Arbitrator; and provide a very full set of annotated forms and precedents (seventy-eight in all) for all occasions likely to be met with in practice.

It may be that before preparing a third edition the author will have to decide whether or not to transform the book from one mainly addressed to land agents to one mainly addressed to lawyers. If he decides to make the change he will probably cite the references to the decided cases in the text, which at present are often merely by name. In addition it would be helpful to have references to articles in the legal periodicals. However, in the present edition a very full table of cases gives references for all cases cited, including a number only mentioned in the *Estates Gazette*; so that all the material is there for the reader who wants to chase a knotty point further.

The author draws attention to the lack of any consistent method of reporting decisions of the Tribunals, which might be remedied if the Minister caused particulars of decisions to be printed from time to time. He also criticizes the lack of any means of appeal to the High Court from the Tribunals on a point of law. If, however, all Tribunals were bound to give a decision in writing in setting forth their reasons, then it would at least make *certiorari* a possibility.

The colloquial and unbuttoned style of writing shows that the legal textbook need not be dull for all readers all the time, and it is a great help in the digestion of complicated and difficult Acts of Parliament. The reviewer prophesies with confidence that Scammell on Agricultural Holdings will take its place with the not very numerous textbooks on this important subject, and that further editions will be called for.

J. F. M.

The Standard Form of Building Contract. By Derek Walker Smith, B.A., M.P., Barrister-at-law, and Harold A. Close, M.A., Solicitor, assisted by Michael Chavasse, B.A., and F. O. Jayne, M.A., Barristers-at-Law. Published by Chas. Knight & Co., Ltd. xvi and 215 pp. (incl. index). (37s. 6d.)

This book is an "Annotation" and "Guide" to the Form of Agreement and Schedule of Conditions of Building Contract, issued by the R.I.B.A., the National Federation of Building Trades Employers and the R.I.C.S. It deals with three separate, but similar, contracts; first, the commonest in current use, the "Local Authorities' Form," then the "Form for Private Use" and finally the "No Quantities" versions. The first contract is fully annotated, by clause and subclause, but only variations from the local authorities' form are noted in the two latter contracts. This course was understandably adopted to avoid repetition, but unfortunately the publishers have seen fit to omit page headings throughout the work—consequently no indication appears at a particular opening of the text, of the actual contract being considered or, on many pages, even of the number of the clause under discussion. Such faults of arrangement—and in a number of cases (*e.g.*, on p. 5) it is difficult to appreciate whether one is reading the text of the contract or the authors' notes thereon—are very serious in a practice book such as this, and we would strongly recommend careful consideration being given to this matter should any new edition be called for. Whilst on arrangement, your reviewer also completely failed to appreciate the reason for including a print of obsolete forms of the contract—both the 1909 and the 1931 Forms are set out in the Appendix (fortunately without notes), and their interest can at best be merely academic.

As to the substance of most of the work, the annotations are very full and carefully prepared. However, the learned authors have not covered all the points on which their readers would presumably require assistance; thus, on p. 17, the impact of the Public Utilities Street Works Act, 1950, on Clause 3 should have been discussed. Under that clause, the contractor is required to give all notices required by any Act of Parliament, but where (as in this contract) the employer is a local authority, notices as to the breaking open of streets, interference with undertakers' apparatus, etc., under the Act of 1950, can be given only by the local authority themselves and *not*, it is suggested, by their contractor. The thorny problem of "extras" or variations, is discussed at p. 28 *et seq.*, but the application of the principle of *Parkinson & Co.* v. *Commissioners of Works* [1949] 2 K.B. 632, that extras must be paid for even if they were not originally in the contemplation of the contracting parties, is not fully brought out. As this book seems to have been primarily designed for local authorities, there could well have been a discussion, on p. 88, of the effect of the giving of a certificate by the architect, and the extent to which that certificate binds the local authority and their other officers, such as the treasurer, who may wish to go behind the certificate to scrutinise its accuracy.

However, we are here going somewhat beyond the field of the conveyancer. The solicitor in private practice will not often, perhaps, come across the "R.I.B.A. contracts," but when he does, he should certainly be able more confidently to advise his client if he can consult this book. The index could have been fuller and the table of cases gives references only to one series of reports; there is no table of statutes, which was probably not necessary.

J. F. G.

Preston and Newsom on Limitation of Actions. Third Edition. By G. H. Newsom and L. Abel-Smith, Barristers-at-Law. Published

by the Solicitors' Law Stationery Society, Ltd. 1953. lii, 336 and (index) 35 pp. (£3 15s. 0d.)

Since the last edition of this standard work there has been considerable activity in the sphere of limitation of actions and there has, as a result, been a substantial number of changes in the text. Part of the conflict on the contribution cases has been settled by the Court of Appeal's decision in *Littlewood* v. *George Wimpey & Co., Ltd.* [1953] 3 W.L.R. 553 since publication. The passage on registered land (pp. 84 and 85) merits rather more extended treatment, particularly with regard to rectification of the register. The position of a beneficiary under a trust in occupation is still not entirely clear but the ground is fully covered and the text has been thoroughly revised. The authors' criticism of *Re Milking Pail Farm Trusts* [1940] Ch. 996 is maintained. In that case trustees had held the land from 1926 to 1940; the sole beneficiary had mortgaged his interest before 1926, but there had been no payment or acknowledgment for over 12 years. The question was whether the mortgagee was barred and it was held, following *Re Landi* [1939] Ch. 828, that he was not. Although the distinction between the two cases, that the latter was a claim by a beneficiary against a trustee while the former was beneficiary against beneficiary, is well founded, it would seem to be contrary to principle that a mortgagee should be barred against a beneficiary who has not been in possession or receipt of the rents and profits and, curiously enough, there is nothing in the report to indicate what happened to the land between 1926 and 1940. The statement on p. 79 that a disseisor apparently does not get a title to appurtenant rights seems open to considerable doubt. True he does not get a way of necessity for there is no grant from which it can be implied, but does he not get easements appurtenant to the land and, possibly, the benefit of restrictive covenants annexed to it?

We know from experience that the book is quite invaluable when dealing with any point on limitation of actions and we can unhesitatingly recommend it. We think, however, that £3 15s. is rather a high price even today and even having regard to the excellence of its typography.

E. F. G.

Emmet's Notes on Perusing Titles. Thirteenth Edition. Third Cumulative Supplement to June 30, 1953. The Solicitors' Law Stationery Society, Ltd. (15s.) (Book and Supplement £7.)

This Supplement supersedes both the First and Second Supplements and the Addenda and Corrigenda at p. civ of the second volume of the main work. Since the last Supplement there has been a good deal of legislation which affects conveyancers, such as the Intestates' Estates Act, 1952, the Housing Act, 1952, and the Town and Country Planning Act, 1953, all of which are duly noted. The Supplement also contains some useful observations on the new Law Society's Conditions of Sale, 1953.

In the next Supplement a reference should be made in the Noter-Up to p. 215 of the main work to the opinion of the Law Society that apportionment of rent should be on an annual basis if the rent is at a specified rate per annum, but by reference to the number of days in the quarter if payable at a specified rate per quarter (*Law Society's Digest Suppt.*, 1951, Opinion 1464 (n)).

E. O. W.

We have also received:—

Covenants, Settlements and Taxation. By G. Boughen Graham, LL.B., Barrister-at-Law. Oyez Practice Notes. The Solicitors' Law Stationery Society, Ltd. 70 pp. (10s.) This booklet sets forth in a clear and readable way the difficult income and surtax provisions relating to deeds of covenant

and settlements and provides a practical guide enabling the practitioners to avoid the numerous pitfalls. Estate duty is also dealt with and there are twelve precedents.

The Law Quarterly Review. October, 1953. Stevens & Sons, Ltd. (10s.) Professor A. D. Hargreaves, in his "Licensed Possessors," has examined the history of the law relating to licences and, citing a wealth of authority, concludes that the doctrine of *Errington* v. *Errington* is wrong. This article is one of the best that has been written on this subject.

The Oyez Guides to Enquiries of Local Authorities. By J. Gilchrist Smith, LL.M. The Solicitors' Law Stationery Society, Ltd. 1s. each. These three cardboard foolscap folders in distinct colours give a short guide to the new local inquiry forms. As there are certain optional inquiries it should prove a great help to practitioners to be able to turn to the folder to find out the purpose of any particular inquiry. The publishers have taken great care to make the folders as useful as possible.

Costs in the Chancery and Queen's Bench Division. By J. L. R. Robinson. Oyez Practice Notes. The Solicitors' Law Stationery Society, Ltd. 80 pp. (10s. 6d.)

PRECEDENTS

Form 1

Scheme for Disposing of Flats as Freeholds

I

Conveyance by an Owner who has Converted his Property into Flats (which he Intends to Sell as Freeholds) of Certain Parts of the Property to a Company which Enters into Covenants Designed to Ensure that these Parts of the Property will be Available for the Amenity and Enjoyment of the Owners of the Flats (*a*).

This and the following precedents were drafted by J. A. R. Finlay, Barrister-at-Law

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Convertor") of the one part and B Ltd. whose registered office is at *etc.* (hereinafter called "the Service Company") of the other part. Parties.

(*a*) This and the three following precedents illustrate a method of disposing of flats as freeholds. The method is applicable both to the case where a property has been built as a block of flats and the case where an existing property has been converted into flats; but the latter is probably the case which will most frequently arise, and the precedents expressly contemplate a conversion. The two principal objects of this method of dealing with the matter are: (i) to ensure that the maximum price will be obtained for the flats; and (ii) to ensure that when he has sold the flats the erstwhile owner will have divested himself entirely of responsibility for them and for such parts of the property as are intended to be enjoyed in common by the owners of the several flats.

In outline the method is as follows:—

(1) The Convertor (as he is called in the above precedent) procures the incorporation of a company with objects such as are recited above. Nominees of the Convertor subscribe the memorandum of association.

(2) The shares not issued to the subscribers of the memorandum of association are issued to the Convertor in consideration of the conveyance by him to the Service Company of the property comprised in the above conveyance. This conveyance has to be registered under Companies Act,

Recitals.

WHEREAS:—

Seisin.

(1) The Convertor is the estate owner for his own use and benefit in respect of the fee simple free from incumbrances of the property situated in the Parish of —— in the County of —— and formerly known as Opportunity Hall but now known or intended to be known as Opportunity Mansions which said property consists of a main building (formerly the mansion house) now divided into eight flats with a common entrance hall staircase and lift and of access and amenity land (*b*) enjoyed and used or intended to be enjoyed and used with the said flats or some of them and which said property is hereinafter called "the Development Property"

Conversion into flats.

(2) The Convertor has recently converted the said main building into eight flats and now intends to sell each of the said flats for an estate in fee simple in possession together with certain ancillary rights over or in respect of the said entrance hall staircase and lift and access and amenity land

---

1948, s. 52. The conveyance contains a covenant by the Service Company to execute leases of easements in favour of the Convertor's nominees, *i.e.*, the purchasers of the flats.

(3) The Convertor enters into contracts for sale of the flats; and these contracts contain provisions dealing with the execution of a lease of easements by the Service Company. The Contract also provides for the transfer by the Convertor to the purchaser of a share in the Service Company. As there are as many shares in the Service Company as there are flats the final result will be that each owner of a flat will hold one share in the Service Company and that no persons will be members of the Service Company other than owners of the flats. The articles of association will contain provisions restricting transfer of shares appropriate to ensure that no person will be registered as a member of the Service Company unless he is the owner of a flat. See Form II for the provisions which should be inserted in the contract of sale.

(4) The Convertor conveys the flats to his purchasers pursuant to the contracts of sale. See Form III.

(5) The Convertor procures the execution by the Service Company of a lease of easements in favour of each of his purchasers. See Form IV.

These Forms illustrate the method. They may require considerable alteration to adapt them to the peculiarities of particular cases.

(*b*) If there are garages it will have to be considered whether the garages are to be sold as freeholds to the purchasers of the flats or conveyed to the Service Company with the intention that the Company will let the garages to the owners of the flats. The same observations apply to any other outbuildings and also to parts of the property such as cellars which it is desired should be used by the owners of the flats severally and not communally.

(3) The Service Company is a company incorporated under the Companies Act 1948 with an authorised share capital of £80 divided into eight shares of £10 each (of which two only have been issued) with the objects among others of acquiring from the Convertor such part of the Development Property as is hereinafter conveyed of executing such leases as are hereinafter mentioned and of providing certain services to and for the owners and occupiers from time to time of the said flats being such services as are mentioned in the drafts already prepared of the said leases

Incorporation of service company.

(4) The Convertor and the Service Company have agreed that in consideration of the allotment and issue to the Convertor of those six of the said eight shares not yet issued (which allotment has already been made and which issue to the Convertor is intended to be made upon the execution hereof) and in consideration of the covenant by the Service Company hereinafter contained to execute the eight leases hereinafter mentioned the Convertor should convey to the Service Company in fee simple and free from incumbrances such part of the Development Property as hereinafter appears.

Agreement.

NOW THIS DEED WITNESSETH as follows:—

1. IN consideration of the allotment and issue to the Convertor of the said six shares and of the covenants by the Service Company hereinafter contained the Convertor AS BENEFICIAL OWNER hereby conveys unto the Service Company ALL AND SINGULAR the several parts of the Development Property specified and described in the First Schedule hereto (and so that there shall be included in the premises hereby conveyed one half part severed vertically horizontally or otherwise as the case may require but only such one half part of all such walls floors and ceilings or roofs as are adjacent to the said several parts described in the First Schedule hereto and separate the same several parts from the said eight flats or any of them) TOGETHER with such easements rights and privileges as are specified in the Second Schedule hereto in over or in respect of the parts not hereby conveyed of the Development Property EXCEPT AND RESERVED in fee simple to the Convertor his successors and

Conveyance.

Parcels.

assigns owners and occupiers for the time being of such part of the Development Property as is not hereby conveyed or of any portion of the said part ALL THOSE easements rights and privileges specified in the Third Schedule hereto in over or in respect of the premises hereby conveyed TO HOLD unto the Service Company in fee simple.

Habendum.

Covenant.

2. THE Service Company hereby covenants with the Convertor that the Service Company will from time to time at the request and cost of the Convertor execute eight several leases each of such leases to be in the form of a draft already prepared and identified by the initials thereon of X and Y and one such lease to be executed in respect of each of the said eight flats and so that the lessee under each such lease shall (at the option of the Convertor) be the Convertor or the purchaser from him of the flat in respect of which such lease falls to be executed.

Miscellaneous provisions.

3. etc. (*Insert acknowledgments for production, certificate of value, and other appropriate clauses*).

IN WITNESS, *etc.*

THE FIRST SCHEDULE

Parcels.

THIS Schedule contains particulars of the parts hereby conveyed of the freehold property hereinbefore referred to as the Development Property. The Development Property is that parcel of land situated in the Parish of —— in the County of —— containing in the whole —— acres or thereabouts having a frontage to —— of —— feet or thereabouts and a depth therefrom of —— feet or thereabouts as the same is delineated on the Plan Numbered 1 annexed hereto and thereon edged with a red verge line Together with the messuage or block of flats outbuildings and other buildings erected thereon or on some parts thereof and known as Opportunity Mansions (formerly Opportunity Hall) in the said County of ——. The following are the parts of the Development property hereby conveyed:—

1. ALL that piece or parcel of land (part and parcel of the Development Property) being the carriageway and side and back passages and gardens of the Development Property as the

same piece or parcel of land is for the purpose of identification delineated on the said Plan Numbered 1 annexed hereto and thereon coloured green and brown

2. ALL those front and rear entrance halls passages and staircases (other than entrance halls passages and staircases situated within the said eight flats or any of them) within the said block of flats as the same are for purposes of identification indicated on the Plans Numbered 2 3 and 4 respectively annexed hereto in the manner hereinafter mentioned. The said Plans Numbered 2 3 and 4 are respectively plans of the ground floor the first floor and the second floor of the said block of flats. On the said Plans Numbered 2 3 and 4 the said entrance halls passages and staircases are shown coloured blue (*c*)

3. ALL that piece or parcel of land (being the basement or foundation of the lift shaft in the said block of flats) as the same is delineated on the Plan Numbered 4 annexed hereto and thereon coloured brown Together with the lift shaft erected thereon and all fixed and other machinery comprising or used in connection with the lift installed in the said shaft

4. THE attic and the outer roof of the said block of flats.

THE SECOND SCHEDULE

Particulars of the easements rights and privileges appurtenant to the land conveyed

Appurtenant easements.

1. FULL and free running and passage of water soil gas and electricity through and along such parts of the water main and other pipes sewers drains tubes and wires as pass through any part of the land (being part of the Development Property) not included in this Conveyance (except such pipes sewers drains tubes and wires as terminate in and serve any flat in the Development Property) together with the right for the Service Company and its successors in title owners from time to time of the property hereby conveyed at all reasonable times and

(*c*) In a simple case this description may suffice: but variations will frequently be required to deal with the difficulties caused by projections, irregularities in the levels of the different floors, and the stowage spaces of meters, water tanks and other apparatus intended to be vested in the Service Company.

with servants and workmen to enter upon the parts not hereby conveyed of the Development Property for the purpose of repairing maintaining reinstating and renewing the same pipes sewers drains tubes and wires the Service Company and its successors in title aforesaid doing no unnecessary damage by such entry repair maintenance reinstatement or renewal and making good all damage done thereby or in the course thereof

2. ALL such rights of support for the land hereby conveyed over and from the land (part of the Development Property) not included in this Conveyance as are necessary to ensure for the estate owner for the time being of the land hereby conveyed the right to enjoy as appurtenant to the land hereby conveyed such facilities and protection in the nature of support for the land hereby conveyed as have hitherto been enjoyed over or in respect of the land (part of the Development Property) not included in this Conveyance by reason of the land hereby conveyed and the remainder of the Development Property having been in common ownership.

THE THIRD SCHEDULE

Reserved easements.

Particulars of the easements rights and privileges excepted and reserved out of this Conveyance to the Convertor

1. FULL and free running and passage of water soil gas and electricity through and along such parts of the main water and other pipes sewers drains tubes and wires leading to or from or serving any part of the Development Property not hereby conveyed as pass through any part of the land hereby conveyed together with the right for the Convertor and his successor in title owners from time to time of the said eight flats or any of them at all reasonable times and with servants and workmen to enter upon the land hereby conveyed for the purpose of repairing maintaining reinstating and renewing the same pipes sewers drains tubes and wires the Convertor his successors and assigns aforesaid doing no unnecessary damage by such entry repair maintenance reinstatement or renewal and making good all damage done thereby or in the course thereof

2. ALL such rights of support for the part of the Development Property not hereby conveyed over and from the land hereby conveyed as are necessary to ensure for the estate owner for the time being of such part of the Development Property as aforesaid the right to enjoy as appurtenant to such part as aforesaid such facilities and protection in the nature of support for the part of the Development Property not hereby conveyed as have hitherto been enjoyed over or in respect of the land hereby conveyed by reason of the land hereby conveyed and the remainder of the Development Property having been in common ownership.

II

Provisions to be Inserted in a Contract of Sale of a Flat which is Sold in Execution of the Transaction Contemplated in Form I.

Conveyance to Purchaser.

(a) THE property shall be conveyed to the Purchaser by a Conveyance in the form of the draft conveyance set forth in the First Part of the Schedule hereto. The property is sold as it is described in the parcels of the said draft conveyance and is sold subject to the easements rights covenants and stipulations subject to which the property is purported to be conveyed by the said draft conveyance. The Purchaser shall execute the Conveyance to him and a duplicate thereof. The said Conveyance shall contain such covenants by the Purchaser as appear in the draft Conveyance aforesaid.

Lease of easements.

(b) THE Vendor shall procure the execution by B Ltd. (hereinafter called "the Service Company") of a lease in favour of the Purchaser in the form of the draft lease set forth in the Second Part of the said Schedule. The said lease shall be delivered to the Purchaser on completion and the Purchaser shall on completion execute the counterpart thereof. The Purchaser shall not be entitled to raise any requisitions or objections concerning or with respect to the provisions of the said Lease or the title to the property comprised therein. The expense of stamping the said Lease and the counterpart thereof shall be borne by the Purchaser.

Share in Service Company.

(c) THE Vendor shall transfer or procure the transfer to the Purchaser of one fully paid share in the Service Company and on completion the Purchaser shall execute such transfer which shall be stamped by and at the expense of the Purchaser. The Purchaser having been supplied with a copy of the Memorandum and Articles of Association of the Service Company shall be deemed to have notice of the contents thereof.

Schedules.

THE SCHEDULE

FIRST PART

[*Herein will be set forth the draft conveyance to the Purchaser: see Form III.*]

SECOND PART

[*Herein will be set forth the draft Lease to be executed by the Service Company: see Form IV.*]

III

Conveyance of a Flat to be Executed as Part of the Transaction Contemplated in Form I.

Parties.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor") of the one part and C of *etc.* (hereinafter called "the Purchaser") of the other part.

Recitals.

WHEREAS:—

Seisin.

(1) At the date of the Conveyance hereinafter recited the Vendor was the estate owner for his own use and benefit in respect of the fee simple free from incumbrances of the property situated in the Parish of —— in the County of —— formerly known as Opportunity Hall and now known as Opportunity Mansions which property is hereinafter referred to as "the Development Property" and is shown for the purposes of identification upon the Plan Numbered 1 annexed hereto and thereon edged with a red verge line

Conversion.

(2) The main building or mansion house of the Development Property (the situation and extent of which is indicated by the part hatched black upon the said Plan Numbered 1) has recently been converted by the Vendor into eight flats

Conveyance of servient land.

(3) By a Conveyance dated —— and made between the Vendor of the one part and B Ltd. (hereinafter called "the Service Company") of the other part certain parts of the Development Property (not including except by way of the grant of easements thereover any or any part or parts of the said eight flats) were conveyed to the Service Company in fee simple and the Service Company thereby covenanted with the Vendor that the Service Company would when requested by and at the cost of the Vendor execute eight several leases each of such leases to be in the form of a draft therein specified and one of such leases to be executed in respect of each of the said eight flats so that the lessee under each such lease should (at the option of the Vendor) be the Vendor or the Purchaser from him of the flat in respect of which such lease should be executed

Agreement for sale.

(4) The Vendor has agreed with the Purchaser for the sale to the Purchaser for the sum of £—— of the property hereinafter described (which is one of the said eight flats) together with such easements of support and otherwise as hereinafter appear for an estate in fee simple subject to the stipulations set forth in the First Schedule hereto (but with the benefit of the same stipulations so far as the same is annexed to the property hereby conveyed) and subject to such easements as hereinafter appear but otherwise free from incumbrances

Covenants.

(5) It was a term of the agreement for sale before mentioned that in the Conveyance to be executed on completion thereof (being this Conveyance) the Vendor and the Purchaser should enter into such covenants as hereinafter appear with respect to the execution of the Lease relating to the property hereby conveyed which the Vendor is entitled as aforesaid to call upon the Service Company to execute

(6) It was a further term of the said agreement for sale that this Conveyance should contain such other covenants by the Purchaser as hereinafter appear.

Conveyance. NOW THIS CONVEYANCE WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt of which the Vendor hereby acknowledges) the Vendor AS BENEFICIAL OWNER hereby conveys unto the Purchaser

Parcels. ALL THAT flat or suite of rooms known as Flat No. —— on the —— floor of the property situated in —— in the Parish of —— in the County of —— known as Opportunity Mansions (and formerly as Opportunity Hall) TOGETHER WITH such easements of support over and from the Development Property and every or any part thereof (except the part hereby conveyed) as are now appurtenant to the premises hereby conveyed AND TOGETHER with such rights of support for the premises hereby conveyed over and from the part now vested in the Vendor of the remainder of the Development Property as are necessary to ensure for the estate owner for the time being of the premises hereby conveyed the right to enjoy such facilities and protection in the nature of support for the premises hereby conveyed as have hitherto been enjoyed over or in respect of such part of the remainder of the Development Property as aforesaid by reason of the premises hereby conveyed and such part of the remainder of the Development Property as is now vested in the Vendor having been in common ownership AND TOGETHER (in common with all others entitled thereto) with full and free running and passage of water soil gas and electricity through and along such parts of the main water and other pipes sewers drains tubes and wires leading to or from or serving the premises hereby conveyed as pass through any part of the Development Property not hereby conveyed AND TOGETHER with the right for the Purchaser and his successors in title owners from time to time of the premises hereby conveyed at all reasonable times and with servants and workmen to enter upon the land hereby conveyed for the purpose of repairing the same pipes sewers drains tubes and wires the Purchaser and his successors in title doing no unnecesary damage by or in the course of such entry repair maintenance reinstatement or renewal and making good all damage done thereby or in the course thereof AND TOGETHER

ALSO with the benefit of the respective covenants to observe the stipulations (corresponding with the stipulations set forth in the First Schedule hereto) contained in any conveyance by the Vendor of any of the said eight flats (other than that hereby conveyed) being covenants by the grantee of the flat comprised in such conveyance EXCEPT AND RESERVED out of the premises the outer half part severed vertically horizontally or otherwise as the case may require of all walls floors ceilings and roofs bounding the premises and adjacent to such part of the Development Property as is not hereby conveyed AND EXCEPT AND RESERVING in fee simple unto the Vendor and his successors in title owners for the time being of such part of the Development Property as is now and will immediately after the execution hereof remain vested in the Vendor (hereinafter called "the Vendor's Property") such rights of support for the Vendor's Property over and from the premises hereby conveyed as are necessary to preserve for the estate owner from time to time of the Vendor's Property the right to enjoy such facilities and protection in the nature of support for the Vendor's Property as have hitherto been enjoyed over or in respect of the premises hereby conveyed by reason of the same premises and the Vendor's Property having been in common ownership AND EXCEPT AND RESERVING in fee simple unto the Vendor and his successors in title owners from time to time of the Vendor's Property full and free running and passage of water soil gas and electricity through and along such parts of the main water and other pipes sewers drains tubes and wires leading to or from or serving the Vendor's Property or any part thereof as pass through the premises hereby conveyed TOGETHER (by way of exception and reservation) with the right for the Vendor and his successors in title owners from time to time of the Vendor's Property at all reasonable times and with servants and workmen to enter upon the land hereby conveyed for the purpose of repairing the same pipes sewers drains tubes and wires the Vendor and his successors in title aforesaid doing no unnecessary damage by or in the course of such entry repair maintenance reinstatement or renewal and making good all damage done thereby

Exceptions.

Habendum. Incumbrances.

or in the course thereof TO HOLD the same unto the Purchaser in fee simple SUBJECT to all such rights of support and to such rights of running and passage of water soil gas and electricity and rights ancillary thereto and to such easements as (by virtue of the Recited Conveyance dated —— or by virtue of any of the conveyances already executed by the Vendor of any of the said eight flats already sold by him as hereinbefore recited) are appurtenant to such part of the Development Property as does not consist of the premises hereby conveyed or of the Vendor's Property AND SUBJECT ALSO to the stipulations restrictive of the user of the premises hereby conveyed set forth in the First Schedule hereto so far as such stipulations affect the premises hereby conveyed and are subsisting and capable of being enforced by virtue of the covenants by the Vendor imposing the same contained in each of the conveyances already executed by the Vendor and comprising collectively such of the said eight flats as have already been sold by the Vendor as aforesaid.

Covenants.

2. THE Vendor as to each of the flats aforesaid now vested in the Vendor and to the intent to bind the same flats and each of them in the hands of all persons by whom the same shall for the time being be respectively owned or occupied and for the benefit of the premises hereby conveyed hereby covenants with the Purchaser and the Purchaser as to the premises hereby conveyed and to the intent to bind the same in the hands of all persons by whom the same shall for the time be owned or occupied and for the benefit of each of the flats aforesaid remaining vested in the Vendor hereby covenants with the Vendor that the Vendor and his successors in title owners of the Vendor's Property or any part thereof (in the case of the Vendor's covenant) and the Purchaser and his successors in title owners of the premises hereby conveyed (in the case of the Purchaser's covenant) shall respectively observe and perform the said stipulations set forth in the First Schedule hereto.

3. THE Purchaser hereby further covenants with the Vendor as a covenant additional to and not in any wise in derogation

from the covenant by the Purchaser hereinbefore contained and by way of indemnity to observe and perform the stipulations set forth in the First Schedule hereto.

Acknowledgments.

4. THE Vendor hereby acknowledges the right of the Purchaser to the production of the documents particulars of which are contained in the Second Schedule hereto (the possession of which is retained by the Vendor) and to delivery of copies thereof and hereby undertakes with the Purchaser for the safe custody of the same documents.

5. THE Purchaser hereby acknowledges the right of the Vendor to production of this Conveyance (the possession of which is retained by the Purchaser) and to delivery of copies thereof and hereby undertakes with the Vendor for the safe custody thereof.

6. etc. [*Insert certificate of value if appropriate and any other necessary clauses.*]

IN WITNESS, *etc.*

Schedules.

THE FIRST SCHEDULE

[*To contain stipulations restrictive of the use of the flats.*]

THE SECOND SCHEDULE

[*To contain particulars of the documents of title retained by the Vendor*] (*d*).

IV

Lease of Easements to be Executed as Part of the Transaction Contemplated in Form I.

Parties.

THIS LEASE is made the —— day of —— BETWEEN B Ltd. (hereinafter called "the Service Company" which expression shall where the context so admits include the estate owner or owners for the time being of the reversion expectant on the

(*d*) These documents will be handed over to the last of the eight purchasers of the flats; and the conveyance to the last purchaser will therefore contain neither the Vendor's statutory acknowledgment nor this schedule.

term hereby created) of the one part and C of —— (hereinafter called "the Lessee" which expression shall where the context so admits include the personal representatives and assigns of the said C) of the other part.

Recitals. WHEREAS:—

(1) The Lessee is the estate owner in respect of the fee simple of Flat No. —— (hereinafter called "the Flat") in the property known as Opportunity Mansions —— in the Parish of —— in the County of —— (which said property is hereinafter called "the Development Property") and the Service Company is the estate owner in respect of the fee simple of certain parts of the Development Property (all such parts as are owned by the Service Company being hereinafter referred to as "the Servient Property") that is to say the gardens carriageway and side and back passage ways and the front and rear entrance halls passages and staircases of the main building of the Development Property (of which said main building the Flat constitutes part) the lift shaft and lift situated in the said main building and the attic and outer roof of the said main building and the Service Company has agreed to grant to the Lessee such rights over the Servient Property for such term and subject to such conditions as hereinafter appear and the Lessee and the Company have agreed to enter into such mutual covenants and agreements with respect to such rights and otherwise as are hereinafter contained.

NOW THIS DEED WITNESSETH as follows:—

Demise. 1. IN consideration of the rents hereinafter reserved and the covenants by the Lessee hereinafter contained the Service Company hereby demises unto the Lessee FIRST Full and free right and liberty for the Lessee and his successors in title owners or occupiers from time to time of the Flat at all times and for all purposes of domestic use and convenience incident to the occupation of the Flat but not further or otherwise and in common with the owners of the other flats in the Development Property to go pass and repass ascend and descend (and in the case of the carriageway hereinafter mentioned with or without motor cars and other vehicles) through over on or in

the carriageway at the front of the Development Property the main entrance the entrance hall at the front the rear entrance and the common passages and stairways of the said main building and also the passages and ways leading from the main entrance to the said main building outside the said building to the sides and the back thereof SECONDLY Full and free right and liberty for the Lessee and his successors in title owners or occupiers from time to time of the Flat (and all persons authorised in that behalf by the Lessee and his successors in title aforeaid) to use the lift in the said main building for the purpose of ascending and descending therein and for the purpose of transporting therein such domestic animals and chattels as can properly and safely (having regard to the carrying capacity of the said lift) be carried therein and THIRDLY Full and free running and passage of water soil gas and electricity through and along such parts of the main water and other pipes sewers drains tubes and wires leading to or from or serving the Flat as pass through over or under any part of the Servient Property TO HOLD the premises unto the Lessee (and so that the same premises shall be appurtenant to the Flat) for the term of nine hundred and ninety-nine years from —— paying therefor yearly during the said term the rent of —— to be paid without any deduction on —— in every year the first of such payments being made upon the execution hereof and the next annual payment being made on —— AND ALSO paying by way of further or additional rent such a yearly sum as shall be equal to the sum hereinafter defined as "the Service Charge" in respect of the year with respect to which the same is paid such sum to be calculated in manner hereinafter provided and to be paid in arrear on the days hereinbefore appointed for payment of rent the first such payment to be made on —— (and to be then made with respect to the year ended on that date).

2. THE Lessee hereby covenants with the Service Company as follows:— Lessee's covenants.

(i) To pay the said rents hereby reserved on the days and in manner aforesaid. Rent.

Insurance.

(ii) Not to do or suffer to be done in the Flat any act or thing by reason or in consequence of which any increased or extra premium may become payable for the insurance of the Development Property against loss or damage by fire or any policy for such insurance may become void or voidable.

Proviso for re-entry.

3. IF the said yearly rents hereby reserved or either of them or any part thereof respectively shall be in arrear for —— days after the same shall have become due (whether any formal or legal demand therefor shall have been made or not) or if the Lessee shall at any time fail or neglect to perform or observe any of the covenants and agreements on his part to be observed and performed and hereinbefore contained or shall become bankrupt or if any assign of the Lessee being a Company shall enter into liquidation whether compulsory or voluntary not being merely a voluntary liquidation for the purpose of amalgamation or reconstruction then and in any such case the Service Company may determine the term hereby granted and exclude the Lessee from the exercise or enjoyment hereunder of the easements hereby demised and may thenceforth hold and enjoy the Servient Property as if this Lease had not been made.

Lessor's covenants

4. THE Service Company hereby covenants with the Lessee as follows:—

to insure;

(i) That the Service Company will at all times during the said term (save only during such period if any as such insurance as is hereinafter mentioned may be avoided by any act of the Lessee) insure and keep the Development Property insured against loss or damage by fire in some insurance office of repute in the sum of £—— at the least (so that the same is from time to time insured in the full value thereof) and will at any reasonable time of the day at the request of the Lessee produce to him or his agent the policy of insurance and the receipt for the current year's premium and will cause all moneys received under any such policy to be laid out in rebuilding and reinstating and the Service Company shall rebuild and reinstate the Development Property as and when such rebuilding or reinstatement may be necessary.

(ii) That the Service Company will at all times during the said term hereby granted maintain the said lift in proper working order and repair and keep the same in good repair and condition. to maintain lift;

(iii) That the Service Company will at all times during the said term repair and maintain in good repair and condition the said carriageway entrance halls staircases and stairways and passages and the walls and ceilings of the said halls staircases stairways and passages and the outside passages and ways hereinbefore mentioned. to repair;

(iv) That the Service Company will as often as may be necessary during the said term repair renew and replace the carpets and floor coverings of the Servient Property in order to maintain the said carpets and floor coverings in the condition in which the same now are. to renew floor coverings;

(v) That the Service Company will at all times during the said term repair and maintain in good repair and condition the roof of the said main building and the pipes and drains leading therefrom. to repair roof:

(vi) That the Service Company will at all times during the said term cultivate tend and keep in proper and tidy condition the gardens and paths at the front side and rear of the Development Property and repair and maintain in good repair and condition the wall along the —— and the fences along the —— and —— boundaries thereof. to cultivate garden;

(vii) That the Service Company will at all times during the said term cause the said entrance halls staircases and stairways and the said lift to be swept and cleaned once in each weekday (Bank and other public holidays excepted) in every week. to clear entrances;

(viii) That the Service Company will in the —— year —— and afterwards in every third year of the said term paint with two coats of good oil paint all the outside wood and metal work of the Development Property. to paint outside wood and metal;

(ix) That the Company will at all times during the said term pay such rates and charges as may be or become payable in respect of the supply of water to the main water storage tank of the Development Property. to pay water rates;

to maintain lighting circuits.

(x) That the Company will at all times during the said term maintain in good repair and proper working order all wiring meters switches lights and other apparatus used for the purpose of lighting the said entrance hall stairways and staircases and passages and pay all charges payable in respect of electricity consumed and apparatus used and expended for the purpose aforesaid.

(xi) That without prejudice to the generality of the covenants by the Service Company hereinbefore contained the Service Company will at all times during the said term execute all necessary and proper repairs to the Servient Property.

Service charge.

5. THE Service Charge in respect of the Flat in any year shall be one eighth of the aggregate of the sums actually expended by the Service Company in that year in observing and performing the covenants on the part of the Service Company hereinbefore contained (*e*).

Quiet enjoyment.

6. THE Service Company hereby further covenants with the Lessee that the Lessee paying the said rents hereby reserved and performing and observing the covenants and agreements on the part of the Lessee to be observed and performed hereinbefore contained shall during the said term peaceably and quietly hold and enjoy the said demised premises without any lawful interruption or disturbance by the Service Company or any person or persons claiming through under or in trust for the Service Company.

IN WITNESS, *etc.*

(*e*) It will often happen that the fair service charge should be greater for some flats than for others.

Form 2

Conveyance on Sale of Land and House Property under the order of the Court of Protection

A

Usual Form of Conveyance where an Order for Sale has been made under procedure 1 (a) (*see p.* 101 *ante*).

PARTIES: A B [*no address required*] (hereinafter called "the Vendor") acting by C D of *etc.* pursuant to the hereinafter recited Order (hereinafter called "the Receiver") of the one part and E F. of *etc.* (hereinafter called "the Purchaser") of the other part.

WHEREAS:— Recitals.

(1) The Vendor is seised in fee simple in possession [free from incumbrances] of the property hereinafter described [subject as hereinafter mentioned but otherwise free from incumbrances]

(2) By an Order dated the —— day of —— 19— made in the Court of Protection under the Act 53 Vict. c. 5 and Amending Acts in the matter of the Vendor the Receiver was authorised subject to the approval of the Master of the said Court in the name and on behalf of the Vendor to sell [the freehold property belonging to the Vendor] [the said freehold property] and for that purpose [*if the purchase money is to be lodged in court by the Purchaser*—upon lodgment in Court of the purchase money as therein provided] [*if purchase money is to be received by the Receiver*—to receive and give a discharge for the purchase money and] to execute and do such instruments acts and things as the said Master should settle and approve

(3) Pursuant to the said Order and with the approval of the said Master the Receiver on behalf of the Vendor has agreed to sell the said property hereinafter described to the Purchaser at the price of £——

(4) [*only required if the purchase money is to be lodged in court by the Purchaser*] Pursuant to the said Order the said sum of £—— has been lodged in Court by the Purchaser to

the credit of the Vendor as appears by the certificate of the Accountant-General of the Supreme Court dated the —— day of —— 19—

(5) The said Master has settled and approved these presents as appears by his seal impressed in the margin hereof.

Operative part.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said Order and agreement and in consideration of the sum of £—— [*where the purchase money is to be lodged in court by the Purchaser*—so lodged in Court as aforesaid] [*where the purchase money is to be received by the Receiver*—now paid by the Purchaser to the Vendor acting by the Receiver as aforesaid (the receipt whereof is hereby acknowledged)] the Vendor as Beneficial Owner acting by the Receiver as aforesaid hereby conveys unto the Purchaser (*parcels*) TO HOLD unto the Purchaser in fee simple [SUBJECT to *etc.*].

[*If the property is subject to any restrictive or other covenants or conditions in respect of which the Vendor will remain liable after he has parted with the property, the usual covenant for indemnity by the Purchaser must be inserted.*]

[*Certificate of value in common form.*]

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered by the said A B acting by the said C D as aforesaid in the presence of } (A B) (L.S.) by (C D)

B

Usual Form of Conveyance where a Conditional Agreement has been entered into under procedure 1 (b) (*see p.* 101, *ante*).

PARTIES [*as in Form A*]

Recitals.

(1) [*as in Form A*]

(2) By an Agreement dated the —— day of —— 19— the Receiver acting on behalf of the Vendor agreed subject to the approval of the Master of the Court of Protection to sell and transfer to the Purchaser the said freehold property at the price of £——

(3) By an Order dated the —— day of —— 19— made in the Court of Protection under the Act 53 Vict. c. 5 and Amending Acts in the matter of the Vendor the said Conditional Agreement was adopted on behalf of the Vendor and was to be carried into effect and for that purpose

[*if the purchase money is to be lodged in court by the Purchaser* —upon lodgment in Court of the purchase money as therein provided the Receiver was authorised in the name and on behalf of the Vendor]

[*if the purchase money is to be received by the Receiver*—the Receiver was authorised in the name and on behalf of the Vendor to receive and give a discharge for the purchase money and] to execute and do such instruments acts and things as the Master of the said Court should settle and approve.

[*if the purchase money is to be lodged in court by the Purchaser —insert Recitals* (4) *and* (5) *from Form A*]

[*if purchase money is to be received by the Receiver—insert Recital* (5) *from Form A*].

NOW THIS DEED WITNESSETH as follows:— Operative part.

1. IN pursuance of the said Agreement and Order and [*continue as in the operative part of Form A*].

Form 3

Deed of Covenant for the Benefit of an Infant for the Maximum Amount for the Time being Allowed without Depriving the Infant's Parents of the Child's Allowance (*a*).

(Drafted by James H. George, LL.B., Solicitor)

THIS DEED is made the —— day of —— 19— BETWEEN A B of *etc.* (hereinafter called "the Grantor") of the one

(*a*) Stamp duty 10s. deed stamp as the covenant is for an indefinite amount.

The covenant, to be effective so as to permit the covenantor to treat the payments as a deduction for income and surtax purposes, must not be for a period which cannot exceed six years from the date of the first payment to the date of the last payment (Income Tax Act, 1952, s. 392; *C. I. R.* v. *St. Luke's Hostel Trustees* (1930) 15 T.C. 682), nor in favour of a child of

part and C D of *etc.* [*father of the child*] (hereinafter called "the Trustee") of the other part

WHEREAS the Grantor is desirous of making such provision as is hereinafter contained for the benefit of [*child*] (hereinafter called "the Beneficiary") who is the son [daughter] of the Trustee and who was born on the —— day of —— 19—.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of such desire as aforesaid and in consideration of the natural love and affection of the Grantor for the Beneficiary the Grantor hereby covenants with the Trustee that the Grantor will pay to the Trustee during every year ending on the 5th day of April happening during the period mentioned in Clause 3 hereof such a sum (if any) as with the other income [if any] of the Beneficiary in his [her] own right (without taking into account any income which is by statute not to be taken into account in calculating the amount mentioned in Clause 4 hereof) will make up the Beneficiary's income for every such year to the amount mentioned in Clause 4 hereof without any deduction whatsoever (except for income tax) the first of such payments to be made in respect of the year ending on the 5th day of April 1954.

2. The Trustee shall stand possessed of all sums (if any) payable under Clause 1 hereof as and when received by the Trustee UPON TRUST to apply the same for or towards the maintenance upbringing education or otherwise howsoever for the benefit of the Beneficiary as the Trustee shall in his absolute discretion think fit (*b*).

---

the covenantor (Income Tax Act, 1952, s. 397). It could be by a grandparent, uncle or stranger-in-blood.

Where a child has an income of its own in excess of a certain amount, at present £85 (Finance Act, 1952, s. 14), the parent loses the child's allowance. The precedent enables the maximum advantage to be derived without prejudicing the child's allowance if the statutory maximum income permitted to the child should be reduced. The danger and disadvantages of specifying a particular figure are that if the statutory maximum is reduced the child's allowance may be lost, that if the statutory maximum is increased a supplemental deed or deeds will be necessary to take advantage of the increase and that *ad valorem* duty is payable.

(*b*) A power to accumulate income should not be inserted for two reasons; first any sums not distributed are not allowable as deductions in computing the total income of the settlor for the purposes of surtax

3. The period referred to in Clause 2 hereof is the period commencing on the date of this deed and terminating on whichever shall first occur of the following events namely the death of the Grantor the death of the Beneficiary and the attaining by the Beneficiary of the age of 16 years.

4. The amount referred to in Clause 1 hereof is the sum which by virtue of section 212 (4) of the Income Tax Act 1952 as amended or re-enacted or any similar statutory provision for the time being in force in respect of the relevant year is the maximum amount of income to which a child may be entitled in his or her own right without the loss by his or her parent of the right to the income tax allowance commonly known as the child's allowance.

5. Any moneys requiring investment hereunder may be laid out in or upon the acquisition or security of any property of whatsoever nature and wheresoever situate including in particular (but without prejudice to the generality of the foregoing words) insurance policies for the benefit of the Beneficiary whether on the life of the Beneficiary or the Trustee or any other person.

IN WITNESS, *etc.*

Form 4

Supplemental Deed of Covenant for the Benefit of Infants to Increase Annual Amounts already Covenanted for to the Maximum for the Time being Allowed without Depriving the Infants' Parents of the Childrens' Allowance (*c*).

(*Drafted by James H. George, LL.B., Solicitor*)

THIS DEED is made the —— day of —— 19— BETWEEN A B of *etc.* (hereinafter called "the Grantor") of the one

(Income Tax Act, 1952, s. 407); and secondly, any income arising from accumulations would automatically reduce the amount payable under the deed *pro tanto*. If it is not desired to spend the income it can be invested, *e.g.*, by purchasing in the name of the child National Savings Certificates or by paying premiums on a life assurance policy for the child's benefit.

(*c*) Stamp duty 10s. deed stamp. And see notes to last precedent.

part and C D of *etc.* [*father of the child*] (hereinafter called "the Trustee") of the other part

WHEREAS by a Deed (hereinafter called "the First Deed") dated the —— day of —— 19— and made between the Grantor of the one part and the Trustee of the other part the Grantor covenanted to pay to the Trustee on the first days of April and October in every year during the period therein mentioned the sum of twenty-four pounds without any deduction (except for income tax) and it was provided that such periodical sums should be held upon the trusts therein mentioned for the benefit of [*child*] (hereinafter called "Arthur") who is the son of the Trustee and was born on the —— day of —— 19—.

AND WHEREAS by a Deed (hereinafter called "the Second Deed") dated the —— day of —— 19— and made between the Grantor of the one part and the Trustee of the other part the Grantor covenanted to pay to the Trustee on the first days of April and October in every year during the period therein mentioned the sum of twenty-four pounds without any deduction (except for income tax) and it was provided that such periodical sums should be held upon the Trusts therein mentioned for the benefit of [*child*] (hereinafter called "Merelina") who is the daughter of the Trustee and was born on the —— day of —— 19—.

AND WHEREAS the Grantor is desirous of making such further provision as is hereinafter contained for the benefit of Arthur and Merelina respectively.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of such desire as aforesaid and in consideration of the natural love and affection of the Grantor for Arthur the Grantor hereby covenants with the Trustee that the Grantor will pay to the Trustee during every year ending on the 5th day of April happening during the period mentioned in Clause 5 hereof such a sum (if any) as with the payments covenanted to be made under the First Deed and with the other income (if any) of Arthur in his own right (without taking into account any income which is by statute not to be taken into account in calculating the amount mentioned in Clause 7 hereof) will

make up Arthur's income for every such year to the amount mentioned in Clause 7 hereof without any deduction whatsoever (except for income tax) the first of such payments to be made in respect of the year ending on the 5th day of April 19—.

2. In further pursuance of such desire as aforesaid and in consideration of the natural love and affection of the Grantor for Merelina the Grantor hereby covenants with the Trustee that the Grantor will pay to the Trustee during every year ending on the 5th day of April happening during the period mentioned in Clause 5 hereof such a sum (if any) as with the payments covenanted to be made under the Second Deed and with the other income (if any) of Merelina in her own right (without taking into account any income which is by statute not to be taken into account calculating the amount mentioned in Clause 7 hereof) will make up Merelina's income for every such year to the amount mentioned in Clause 7 hereof without any deduction whatsoever (except for income tax) the first of such payments to be made in respect of the year ending on the 5th day of April 19—.

3. The Trustee shall stand possessed of all sums (if any) payable under Clause 1 hereof as and when received by the Trustee UPON TRUST to apply the same for or towards the maintenance upbringing education or otherwise howsoever for the benefit of Arthur as the Trustee shall in his absolute discretion think fit.

4. The Trustee shall stand possessed of all sums (if any) payable under Clause 2 hereof as and when received by the Trustees UPON TRUST to apply the same for or towards the maintenance upbringing education or otherwise howsoever for the benefit of Merelina as the Trustee shall in his absolute discretion think fit.

5. The period referred to in Clause 1 hereof is the period commencing on the date of this deed and terminating on whichever shall first occur of the following events namely the death of the Grantor the death of Arthur and the attaining by Arthur of the age of 16 years.

6. The period referred to in Clause 2 hereof is the period commencing on the date of this deed and terminating on whichever shall first occur of the following events namely the death of the Grantor the death of Merelina and the attaining by Merelina of the age of 16 years.

7. The amount referred to in Clauses 1 and 2 hereof is the sum which by virtue of section 212 (4) of the Income Tax Act 1952 as amended or re-enacted or any similar statutory provision for the time being in force in respect of the relevant year is the maximum amount of income to which a child may be entitled in his or her own right without the loss by his or her parent of the right to the income tax allowance commonly known as the child's allowance.

8. Any moneys requiring investment hereunder may be laid out in or upon the acquisition or security of any property of whatsoever nature and wheresoever situate including in particular (but without prejudice to the generality of the foregoing words) insurance policies for the benefit of Arthur or Merelina (as the case may be) whether on the life of Arthur or Merelina or the Trustee or any other person.

IN WITNESS, *etc.*

Form 5

Appropriation of the Matrimonial Home to the Widow of an Intestate Partly in Consideration of a Sum of Cash (*a*).

(*Drafted by E. H. Bodkin of Lincoln's Inn*)

Parties.

THIS APPROPRIATION is made the —— day of —— 19— BETWEEN A of *etc.* and B of *etc.* (hereinafter collectively referred

(*a*) Under para. 5 (2) of the Second Schedule to the Intestates' Estates Act, 1952, the statutory power of appropriation includes power to appropriate an interest in the matrimonial home, partly in satisfaction of an interest of the surviving spouse in the intestate's estate and partly in return for a payment of money by him or her to the personal representatives. A notice to the personal representatives by a spouse who is an infant requiring them to appropriate the matrimonial home is as valid

to as "the Administrators") of the one part and the said A (hereinafter called "the Widow") of the other part.

WHEREAS:— Recitals:

(1) D late of *etc.* (hereinafter called "the Intestate") died on the —— day of —— 19— intestate and on the —— day of —— 19— Letters of Administration to his estate were granted out of the —— Probate Registry to the Administrators death of husband intestate;

(2) The Intestate left him surviving two children only, viz. the said B and a daughter C (both of whom are of full age) and with his Widow (the Widow) the only persons entitled to participate in his estate next-of-kin;

(3) The funeral testamentary and administration expenses debts and other liabilities of the Intestate including the duties payable on his death have been paid and discharged payment of debts, etc.;

(4) Under the Intestates' Estates Act 1952 the Widow is entitled to a charge on the residuary estate of the Intestate (other than the personal chattels) for the sum of £5000 free of death duties and costs together with £X interest thereon widow entitled to £5,000 and interest;

(5) The residuary estate of the Intestate includes a [freehold] [leasehold] dwelling-house situated and being No. — —— Street in the City of —— in which the Widow was resident at the time of the Intestate's death matrimonial home;

(6) The said dwelling-house has been valued for the purposes hereof at the sum of £Y (*b*) valuation;

(7) The Administrators have at the request of the Widow agreed to appropriate the said dwelling-house partly in satisfaction of the said sum of £5000 and £X interest to which she is entitled and partly in return for the sum of £Z (being the excess of the value thereof over and above the said sums of £5000 and £X). agreement to appropriate.

---

and binding as if he or she were of age, but this appears not to apply where a payment in cash is made.

The stamp duty will be ad valorem both on the £5,000 and the sum paid in cash, as the statutory power of appropriation requires the consent of the spouse; but the stamp duty as regards the £5,000 will, it seems, be payable out of the estate, not by the spouse, as it will be included in the "costs" of the transaction of raising and paying the £5,000.

(*b*) The probate valuation should not be relied on unless both children agree.

Appropriation partly for cash payment.

NOW IT IS HEREBY DECLARED that in pursuance of the said agreement and in return for the sum of £Z now paid by the Widow to the Administrators as administrators of the Intestate (the receipt and payment whereof they hereby acknowledge) the Administrators in exercise of the powers conferred on them by section forty-one of the Administration of Estates Act 1925 and paragraph five sub-paragraph two of the Second Schedule to the Intestates' Estates Act 1952 hereby appropriate the said dwelling-house partly in satisfaction of the sums of £5000 and £X (being interest thereon from the death of the Intestate at the rate of £4 per cent. per annum) to which the Widow is entitled as aforesaid and partly in return for the said sum of £Z so paid by her as aforesaid (*c*).

AS WITNESS *etc.*

Form 6

Mortgage of Freeholds by Administrators of a Husband to Raise the Widow's £5,000 or Part thereof and Interest (*a*).

(*Drafted by E. H. Bodkin of Lincoln's Inn*)

Parties.

THIS MORTGAGE is made the —— day of —— 19— BETWEEN A of *etc.* and B of *etc.* (hereinafter called "the Borrowers") of the one part and C of *etc.* (hereinafter called "the Mortgagee") of the other part.

Recitals:

WHEREAS:—

death of intestate;

(1) D late of *etc.* (hereinafter called "the Intestate") died on the —— day of —— 19— intestate being at his death the

(*c*) The administrators will make a simple unstamped assent in favour of the widow; the Act clearly allows of this being done notwithstanding she is in some respects a purchaser.

Appropriation can be made in respect of the interest on the £5,000. See note (*a*) to next Precedent.

(*a*) The personal representatives may raise the sum of £5,000 or £20,000 or any part thereof, and the interest thereon, and the costs of the transaction, on the security of the whole or any part of the residuary estate. The interest is now payable primarily out of income, but apparently no adjustment need be made between capital and income. The Precedent can be adapted to raising the sum necessary to redeem the widow's life interest.

estate owner in respect of the fee simple of the property hereby mortgaged free from incumbrances and on the —— day of —— 19— Letters of Administration to his estate were granted out of the —— Probate Registry to the Borrowers

agreement for loan.

(2) The Mortgagee has agreed with the Borrowers to lend them the sum of £X which is required by them as such administrators as aforesaid for purposes authorised by the Administration of Estates Act 1925 as amended by the Intestates' Estates Act 1952 upon having the repayment thereof with interest thereon at the rate hereinafter mentioned secured in manner hereinafter appearing.

NOW THIS DEED made in pursuance of the said agreement and in consideration of the sum of £X now paid by the Mortgagee to the Borrowers (the receipt and payment whereof the Borrowers hereby acknowledge) WITNESSETH as follows:—

Legal charge.

1. THE Borrowers AS PERSONAL REPRESENTATIVES of the Intestate and in exercise of the power conferred by the said Acts and all other powers hereby charge by way of legal mortgage

Parcels.

ALL THAT etc. with the payment to the Mortgagee on the —— day of —— next of the said sum of £X with interest thereon in the meantime from the date hereof at the rate of £— per cent. per annum And also with interest after the said date at the rate aforesaid on the principal money for the time being due on this security to be paid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

Borrowers not to be personally liable.

2. NEITHER the said principal sum of £X nor any interest thereon shall constitute a debt due from or be recoverable against the Borrowers or either of them or their respective executors or administrators personally.

No previous assent.

3. THE Borrowers hereby declare that they have not as personal representatives of the Intestate made or executed any previous assent or conveyance relating to the legal estate in the property hereby charged or any part thereof.

Covenants;

4. THE Borrowers hereby jointly and severally covenant with the Mortgagee as follows:—

not to register;

(1) That during the continuance of this security no person shall be registered as proprietor of the property hereby charged

or any part thereof under the Land Registration Acts 1925–1936 or any statutory modification or re-enactment thereof for the time being in force without the previous consent in writing of the Mortgagee

as to insurance.

[(2) That the Mortgagee may require that any money received on any present or future policy of insurance effected on the said property by the Borrowers shall be applied either in rebuilding reinstating or repairing the same or in or towards the reduction of the mortgage money as the Mortgagee may require and for this purpose that they will give notice to the Mortgagee of any claim made by them under any such policy].

PROVIDED THAT the Borrowers shall be liable under the covenants aforesaid only for their own acts or defaults (*b*).

Acknowledgment for production of documents.

5. THE Borrowers hereby acknowledge the right of the Mortgagee to production of the said Letters of Administration to the estate of the Intestate [and of a Conveyance dated etc.] possession whereof is retained by the Borrowers and to delivery of copies thereof.

Definition clause.

6. IN this Deed where the context so admits or requires the expression "the Borrowers" includes the estate owners for the time being of the property hereby charged and the expression "the Mortgagee" includes his personal representatives and assigns.

IN WITNESS *etc.*

Form 7

Conveyance in Consideration of a Life Annuity to the Vendor Charged on the Land (*a*).

Parties.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor") of the one part

(*b*) Power for the mortgagee to repair and insure on default by the Borrowers in doing so and to add the costs to his security could be added if the Borrowers agree.

(*a*) There has been some doubt among conveyancers as to the best method of carrying out a sale in consideration of an annuity for the vendor's life. Such an annuity cannot be a legal rentcharge, but only

and B of *etc.* (hereinafter called "the Purchaser") of the other part.

WHEREAS:—

Recital of seisin and agreement for sale.

The Vendor is seised in unincumbered fee simple in possession of the property hereby assured and has agreed with the Purchaser for the sale thereof to him in consideration of a rentcharge for the life of the Vendor of £X to be charged upon the same property in manner hereinafter appearing.

Conveyance.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the rentcharge hereinafter charged thereon and of the covenants on the part of the Purchaser hereinafter contained the Vendor AS BENEFICIAL OWNER hereby conveys unto the Purchaser ALL THAT *etc.* TO HOLD the same unto the Purchaser in fee simple.

Covenant to pay rentcharge and charge on land.

2. IN consideration of the Conveyance hereinbefore made the Purchaser hereby covenants with the Vendor that he will henceforth pay to the Vendor a yearly sum of £X during the life of the Vendor to commence from the date hereof and to be paid without any deduction (except for landlord's property tax) by equal half-yearly payments on the —— day of —— and the —— day of —— in every year the first payment [being an apportioned sum] to be made on the —— day of —— next And hereby charges all the property hereinbefore conveyed with the payment of the said annuity.

---

an equitable interest. It seems clear that the charge of a life annuity for value does not of itself create a settlement within the Settled Land Act, 1925, as it is not charged voluntarily or in consideration of marriage within s. 1 (1) (v). But the purchaser cannot be prevented from creating a settlement under s. 21 of the Act in order to overreach it, and the land can then be sold free from the annuity, which will attach to the proceeds of sale. But even if he does so, the vendor is entitled to protection which will in most cases be satisfactory: the trustees of such a settlement must be either a trust corporation or two or more individuals approved or appointed by the court; the proceeds of sale can only be invested in authorised securities; and the purchaser can register a land charge in respect of the annuity, which will be a general equitable charge of Class C.

If, however, the vendor desires to retain control over the land, he should convey it to trustees on trust for sale and to pay the annuity out of the proceeds, reserving to himself power to appoint new trustees: see next Precedent.

Remedies for recovery of rentcharge.

3. THE Vendor shall have all the remedies for recovering and compelling payment of the said annuity as are conferred by section one hundred and twenty-one of the Law of Property Act 1925 including power to demise the land to trustees for a legal term on trust to raise the same and any arrears thereof as though the said rentcharge were held for a legal estate and for this purpose the Purchaser appoints the Vendor to be his attorney in his name and on his behalf to execute and do any necessary deed or act And further the Vendor may if at any time the same annuity or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof appoint a receiver of the same annuity or any part thereof in like manner and subject to the like provisions as though he were a mortgagee entitled to exercise his power of sale.

Covenant to repair and insure.

[4. THE Purchaser hereby covenants with the Vendor that he will during the life of the Vendor keep all messuages buildings and property now or hereafter on the land hereinbefore conveyed in good and substantial repair and insured against loss or damage by fire [and aircraft] in the full value thereof in the —— Insurance Office or with underwriters of repute to be approved in writing from time to time by the Vendor in the joint names of the Purchaser and the Vendor and will duly and punctually pay all premiums or other money necessary for effecting and keeping up such insurance immediately on the same becoming due or within one month thereafter and will on demand produce to the Vendor the policy or policies of insurance and the receipt for every such payment and that money received on any insurance of the said premises whether or not effected in performance of this present covenant shall be applied in making good the loss or damage] (*b*).

[5. *Acknowledgment for production of documents.*]

[6. *Certificate as to value* (*c*).]

IN WITNESS *etc.*

(*b*) Where there are valuable buildings on the land this clause should be used. Power to purchase a Government annuity may be added if desired —see cl. 4 of next Precedent.

(*c*) The stamp will be *ad valorem* on 12 annual payments of the rentcharge.

Form 8

Conveyance on Trust for Sale and Settlement of the Proceeds of Freeholds Sold in Consideration of a Life Annuity to the Vendor (*a*).

I. Conveyance

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor") of the first part B of *etc.* (hereinafter called "the Purchaser") of the second part and D of *etc.* and E of *etc.* (hereinafter called "the Trustees") of the third part. Parties.

WHEREAS:—

The Vendor is seised in unincumbered fee simple of the property hereby assured and has agreed with the Purchaser for the sale thereof to him in consideration of an annuity for the life of the Vendor of £X to be secured by the Settlement hereinafter mentioned. Recital of seisin and agreement for sale.

NOW THIS DEED WITNESSETH as follows:—

1. IN consideration of the provisions for securing payment of the said annuity in the said Settlement the Vendor AS BENEFICIAL OWNER with the consent (hereby testified) of the Purchaser conveys unto the Trustees Conveyance on trust for sale.

ALL THAT *etc.*

TO HOLD unto the Trustees in fee simple UPON TRUST to sell the same or any part thereof with power to postpone such sale and hold the net proceeds of any such sale after payment of costs and of the net rents and profits of such part of the same property as shall for the time being remain unsold after payment of outgoings Upon the Trusts and with and subject to the powers and provisions declared and contained concerning the same by a Settlement already prepared and intended to bear even date herewith and to be made by the same persons who are parties hereto and in the same order.

(*a*) See notes to last Precedent. The conveyance could be made to a bank or other trust corporation but it would be necessary to provide for its remuneration.

Power to mortgage.

2. UNTIL twenty-one years from the death of the survivor of the Purchaser and the Trustees the trustees hereof shall have power to raise money by mortgage for any purpose.

Power to appoint trustees.

3. THE Vendor during his life shall have power to appoint a new trustee or new trustees hereof.

[4. *Acknowledgment for production of documents.*]

[5. *Certificate as to value.*]

IN WITNESS *etc.*

II. Settlement

Parties.

THIS SETTLEMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor") of the first part B of *etc.* (hereinafter called "the Purchaser") of the second part and D of *etc.* and E of *etc.* (hereinafter called "the Trustees") of the third part.

WHEREAS:—

Recital of conveyance.

By a Conveyance (hereinafter called "the Conveyance") bearing even date herewith and made between the same persons who are parties hereto and in the same order the property therein described was in consideration of the provisions for securing payment of an annuity of £X to the Vendor during his life contained in a Settlement of even date herewith (being this Deed) conveyed to the Trustees in fee simple Upon Trust to sell the same or any part thereof with power to postpone such sale and to hold the net proceeds of any such sale after payment of costs and of the net rents and profits of such part of the same property as should for the time being remain unsold Upon the Trusts and with and subject to the powers and provisions declared concerning the same by the said Settlement.

NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows:—

Trust to pay annuity and subject thereto for purchaser.

1. THE Vendor and the Purchaser hereby direct that the Trustees shall stand possessed of the net moneys to arise from any sale made under the recited trust for sale in the Conveyance UPON TRUST to invest the same and any other capital money which may be received under the Conveyance in the names of the trustees in

or upon any investments from time to time authorised by law for the investment of trust funds with power to vary such investments for others of a nature hereby authorised and shall stand possessed of the said net moneys and the investments for the time being representing the same UPON TRUST out of the income thereof and the net rents and profits of such part of the property comprised in the Conveyance as shall for the time being remain unsold (and if and so far as such income and rents and profits shall be insufficient out of the capital of the said proceeds of sale and investments) to pay to the Vendor during his life an annuity of £X to commence from the date hereof and to be paid without any deduction (except for landlord's property tax) by equal half-yearly payments on the —— day of —— and the —— day of —— in every year the first payment [being an apportioned sum] to be made on the —— day of —— next and subject to such annuity shall hold the said net proceeds of sale and the investments for the time being representing the same and the income thereof and the net rents and profits of such part of the property comprised in the Conveyance as shall be for the time being unsold IN TRUST for the Purchaser absolutely.

Covenant to pay annuity.

2. THE Purchaser hereby covenants with the Vendor and as a separate covenant with the Trustees that the Purchaser or the persons deriving title under him will pay the said annuity at the times and in the manner hereinbefore appointed for the payment thereof free from all deductions except as aforesaid.

[3. *Covenant to insure—see cl.* 4 *of last Precedent.*]

Power to purchase annuity.

4. (1) IF the Purchaser shall at any time purchase from the Government or any public company approved in writing by the Vendor an annuity of £X for the residue of the life of the Vendor payable half-yearly and to commence from any half-yearly day hereinbefore appointed for payment of the said annuity hereby made payable and all instalments of the same annuity and costs incurred in recovering the same shall have been paid such last-mentioned annuity shall cease to be payable as from the half-yearly day next before the first payment of such purchased annuity and the Vendor shall at the request of

the Purchaser execute a proper deed of release of the said annuity hereby made payable such deed to be prepared and stamped at the sole cost of the Purchaser

(2) The Trustees shall if so required by the Purchaser raise and pay to the Purchaser out of the property and investments subject hereto the costs of and incidental to such purchase.

In witness *etc.*

Form 9

Transfer of the Registered Title to a Council House by a Local Authority to the Sitting Tenant (*a*)

Drafted by T. B. F. Ruoff, Solicitor

H. M. LAND REGISTRY

LAND REGISTRATION ACTS, 1925–1936

COUNTY OR COUNTY BOROUGH .....

TITLE NO. .....

PROPERTY .....

Considera tion.

1. [*date*] In Consideration of —— pounds (£——) (the receipt of which is hereby acknowledged) and in pursuance of

(*a*) The Housing Act, 1952, s. 3, in conjunction with the Housing Act, 1936, s. 79, authorises local authorities, with the consent of the Minister of Housing and Local Government, to sell a council house to the sitting tenant. On such a sale the local authority is required by the Minister to impose conditions which (inter alia) preclude the purchaser from selling without first offering the local authority an option of re-purchase. A circular issued by the Minister dated August 26, 1952, numbered 64/52, constitutes the general consent which he has given to all sales by every local authority to its sitting tenants subject, however, to the conditions set out in the circular.

The purpose of this precedent is to enable a local authority to ensure that the Minister's conditions will be observed when the title to the council house is a registered one. In unregistered conveyancing the imposition of the conditions may be protected under the Land Charges Act, 1925, either by registration of an estate contract under s. 10 (1), Class C (iv), or by registration of a local land charge under s. 15. On registering a transfer containing such conditions the Chief Land Registrar would afford them the parallel protection of the entry of notice under the Land Registration Act,

the powers in that behalf contained in the Housing Acts 1936 to 1952 and in pursuance of the general consent of the Minister of Housing and Local Government contained in a circular dated the 26th August 1952 numbered 64/52 and issued by his directions (which consent is applicable to the transfer hereby made) WE the MAYOR ALDERMAN AND BURGESSES OF THE BOROUGH OF ——, of, etc., (hereinafter called "the Council") [AS BENEFICIAL OWNERS] hereby transfer to —— of, etc., (hereinafter called "the Purchaser") the land shown and edged with red on the plan annexed hereto and known as Number ——, —— Road, —— being part of the land comprised in the title above referred to TOGETHER with the right for the Purchaser in common with the Council and all other persons entitled thereto to the free passage and running of water and soil through the drains pipes and watercourses in or upon the adjoining land belonging to the Council EXCEPT AND RESERVING unto the Council and its successors in title the right to the free passage and running of water and soil through the drains pipes and watercourses in or upon the land hereby transferred and also the right for the Council its servants agents and contractors at reasonable times in the daytime to enter upon the land hereby transferred with or without

Transfer.

Parcels.

1925, s. 49 (1) (c). If a purchaser breaks the conditions under which he buys he can be penalised under the provisions of section 4 of the Housing Act, 1952, and the Acts referred to therein, but it seems that a purchaser from that purchaser cannot be penalised, nor can the transaction be upset by the local authority, even though it may be able ultimately to enforce the option.

In registered conveyancing the local authority has the means of entirely preventing an unlawful sale if it induces the purchaser, as part of the bargain, to consent to the entry of a restriction in the proprietorship register of his title. A fee of 10s. is payable for this. So long as a restriction in the form suggested in this precedent subsists on the register it will protect the option in particular, as well as the conditions of disposal generally, so that no express reference on the register to the option or the conditions will be necessary. The restriction is removable on the application of the local authority but not at the instance of the registered proprietor of the land. If, under the provisions of s. 3 (3) (b) of the Housing Act, 1952, a local authority wished to restrain a successor in title of the purchaser from selling free from the conditions, it would be necessary for the council to give its consent to a sale by the original purchaser upon condition that the successor agreed to the restriction remaining on the register.

workmen for the purpose of inspecting repairing cleansing maintaining and renewing the said drains pipes and watercourses.

Covenant: statutory conditions.

2. THE Purchaser having been the tenant of the Council since [*date*] (*b*) the land hereby transferred is sold subject to the conditions set out in the First Schedule hereto and accordingly the Purchaser hereby covenants with the Council that he will observe and perform the said conditions and that he will not sell transfer or let or attempt or offer to sell transfer or let the land hereby transferred in breach of the said conditions or any of them.

Restrictive covenants.

3. THE Purchaser hereby covenants (*c*) with the Council for the benefit of the adjoining land of the Council being the remainder of the land comprised in the above-mentioned title [and also the land now comprised in the title numbered ——] and to the intent and so as to bind the land hereby transferred into whomsoever hands the same may come but not so as to render the Purchaser liable in damages for any breach of covenant after he shall have parted with all interest in the land hereby transferred that he the Purchaser will observe and perform the stipulations and restrictions set out in the Second Schedule hereto.

Application for restriction.

4. THE Council hereby applies to the Chief Land Registrar for the entry and the Purchaser hereby consents to the entry of a restriction against the title of the land hereby transferred that except under an order of the Registrar no disposition by the proprietor of the land by way of sale or lease made before [*date five years after date of transfer*] is to be registered without the consent of the Mayor Aldermen and Burgesses of the Borough of ——.

5. [*Certificate as to value*].

(*b*) This clause will require slight modification if, *e.g.*, the local authority is selling an unoccupied house or one which has not yet been let: see paragraph 8 of Circular No. 64/52.

(*c*) In view of these covenants a certified copy of the transfer should be lodged when it is presented for registration.

THE FIRST SCHEDULE (*d*)

Conditions of disposal.

(1) During the period of five years from [*date of transfer*]

(a) the land hereby transferred shall not be let at a net rent (exclusive of rates) exceeding £—— per week;

(b) the said premises shall not be resold or transferred at a price in excess of £—— [*present purchase price*] plus such increase for improvements (if any) as may be agreed between the Purchaser or other the owner for the time being and the Council or in default of agreement shall be determined by the Minister of Housing and Local Government on an application made to him either by the owner or by the Council within one month after the default

(2) During such period of five years from [*date of transfer*] the land hereby transferred shall not be sold or leased to any person unless the Purchaser or other the owner has first offered to resell the said land to the Council and the Council has in writing refused the offer or has failed to accept it within one month after it has been made the price to be the sum of £—— [*present purchase price*] plus such increase for improvements or less such allowance for depreciation (if any) as may be agreed between the owner and the Council or in default of agreement shall be determined by the Minister of Housing and Local Government on an application made to him by either party within one month after the default

THE SECOND SCHEDULE

[*Restrictive stipulations as desired for protection of the adjoining land of the Council.*]

[*Seal of Council and signature and seal of Purchaser.*]

(*d*) These are the conditions referred to in the Housing Act, 1952, s. 3, and set out in Circular No. 64/52.

Form 10

Deed of Family Arrangement Making Reasonable Provision for the Widow, to Avoid an Application to the Court under the Inheritance (Family Provision) Act, 1938, as amended (*a*).

(Drafted by E. H. Bodkin, of Lincoln's Inn)

Parties. THIS DEED OF FAMILY ARRANGEMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Son") of the first part B of *etc.* (hereinafter called "the Daughter") of the second part D of *etc.* (hereinafter called "the Widow") of the third part and E of *etc.* and F of *etc.* (hereinafter called "the Trustees") of the fourth part.

Recitals: WHEREAS:—

will; (1) X late of —— in the County of —— (hereinafter called "the Testator") by his will dated the —— day of —— 19— after appointing the Trustees to be the executors and trustees thereof and bequeathing certain legacies [and giving to his widow during her widowhood an annuity of £—— per annum with power for the Trustees to set aside a fund to answer the same] [a legacy of £——] devised and bequeathed ALL his real estate and the residue of his personal estate to the Trustees

(*a*) Under the Inheritance (Family Provision) Act, 1938, as amended by the Intestates' Estates Act, 1952, the court, if it is of opinion that the disposition of the deceased's estate as effected by his will, or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable provision for the maintenance of a dependant (as defined in the Act), may make such reasonable provision as it thinks fit for his or her maintenance. "Dependant" means the husband or wife, a daughter who has not been married or is by reason of some mental or physical disability incapable of maintaining herself, and a son who is an infant or is by reason of such disability incapable of maintaining himself. No application can be made by any person where the surviving spouse is entitled to not less than two-thirds of the income of the net estate (after deducting funeral, testamentary and administration expenses, debts, liabilities and estate duty payable on his death) and the only other dependants are a child or children of such spouse. The application must be made within six months from the date when representation is first taken out. After that date an application can only be made with the leave of the court in special circumstances.

The above Precedent is intended to cover cases where provision for maintenance on the lines of what the court might have been expected to order, is made.

upon trust to sell and convert the same as therein mentioned and to invest the net proceeds of sale (after payment of his funeral and testamentary expenses and debts and the legacies thereby or by any codicil thereto bequeathed) as therein mentioned and to hold the net proceeds of such sale and conversion and the investments from time to time representing the same (thereinafter and hereinafter called the Trust Fund) IN TRUST [as to one moiety thereof for the Widow absolutely and as to the remaining moiety] IN TRUST for all or any his children who being male attained the age of twenty-one years or being female attained that age or married under that age and if more than one in equal shares

death and probate;

(2) The Testator died on the —— day of —— 19— without having revoked or altered his said will which was on the —— day of —— duly proved and registered by the Trustees as the executors therein named in the —— Probate Registry

state of family;

(3) The Testator had issue two children and no more *viz.* the Son and the Daughter [who are not dependants within the meaning of the said Act] (*b*)

no application made under the Act;

(4) The Widow has made no application to the court for reasonable provision under the Inheritance (Family Provision) Act 1938 (as amended) on the faith of an agreement by the Son and the Daughter to make such provision for her out of the Testator's estate as is hereinafter provided (*c*)

NOW THIS DEED made in pursuance of the said agreement and by way of family arrangement WITNESSETH and it is hereby agreed as follows:—

annuity to widow during widowhood to be increased;

1. (1) [The said will of the Testator shall be read and have effect in all respects as though the Testator had thereby bequeathed to the Widow an annuity during her widowhood

(*b*) This will be material if the widow already receives two-thirds of the income under the will as in such a case no application could be made by her if her children were dependants within the meaning of the Act.

(*c*) There would seem to be a doubt whether an agreement by the widow not to apply for provision might not be unenforceable as being against public policy. Consequently it is better not to make an agreement to provide maintenance for her in consideration of her agreeing to make no application but to defer the agreement until the time limit for making an application has expired.

of £—— per annum instead of an annuity during her widowhood of £—— per annum.]

or widow to be entitled to annuity during widowhood.

[The Widow shall in addition to the other benefits conferred on her by the said will be entitled during her widowhood to an annuity of £—— per annum to commence from the death of the Testator and to be paid by equal half-yearly payments on the —— day of —— and the —— day of —— in each year the first of such payments (being the instalments accrued since the Testator's death) to be made on the —— day of —— next to be charged upon and payable out of the income (and so far as such income shall be insufficient out of the capital) of the [moiety of the Trust Fund directed by the said will to be held IN TRUST for the Testator's children] [Trust Fund] AND the Trustees may at any time (without prejudice to the trust for sale and power to vary investments) appropriate sufficient investments of the nature authorised as investments by the said will as a fund for answering by the annual income thereof the said annuity and after such appropriation the Widow shall have no right to resort to or claim against any other part of the [said moiety of the] Trust Fund AND SUBJECT to the said annuity the appropriated fund or so much thereof as shall not be applied in payment of the said annuity shall be held on the trusts by the said will declared in relation to the [said moiety of the] Trust Fund and the income thereof shall be applied as income of the said moiety [the Trust Fund]

Covenant by widow to pay duty (*d*).

(2) The Widow hereby covenants with each of them the Son and the Daughter his and her executors and administrators that she the Widow her executors and administrators will immediately upon the same becoming due pay and discharge all duties which may become payable on her death by reason of the cesser of the said annuity

(*d*) Estate duty will, of course, be payable on the cesser by death of the widow's annuity. It will also be payable in the event of a child predeceasing the widow on the slice of his or her share in expectancy in the trust fund necessary to produce the annuity. The child will be the settlor, but the property will not revert to him in his lifetime so as to fall within the exemption in s. 15 of the Finance Act, 1896. If, however, the widow dies first this claim will not arise. The duty on the widow's and the children's deaths can, however, be escaped altogether if

[1. EACH of them the Son and the Daughter hereby covenants with the Widow that he or she his or her executors and administrators will pay to her for her absolute use and benefit during her widowhood the annual [monthly] sum of £—— such sum to commence from the death of the Testator and to be paid by equal half-yearly payments on the —— day of —— and the —— day of —— in each year the first of such payments (being the instalments accrued since the Testator's death) to be made on the —— day of —— next

Alternative method of securing annuity to minimise duty; covenant to pay annuity;

AND hereby charges with the payment of the said annual sum the income accruing income and capital of the proceeds of sale of the sum of £—— stock forming part of the [said moiety of the Trust Fund directed to be held on trust for the Testator's children] [Trust Fund] and the investments for the time being representing the same AND directs the Trustees to retain the same until the death or remarriage of the Widow.]

charge on particular fund.

2. SUBJECT as herein expressly provided the trusts powers and provisions of the said will of the Testator shall remain of full force and effect.

Will to remain in force.

3. EACH of the parties hereto of the first three parts and their respective executors and administrators shall execute all such deeds and documents and do all such acts as may be necessary or be deemed expedient to give complete effect to this Deed and the costs of the preparation stamping and execution thereof (including this Deed) shall be paid by the Widow.

IN WITNESS, *etc.*

---

the annuity is secured only by the personal covenant of the children; and both the claims can be reduced if the annuity is secured by their personal covenant and charged on a specific small fund; though, of course, there is no point in increasing the free part of the share if it is likely to be retained by the child when paid over and thus be liable to duty on his death. The duty will be limited to the fund on which the annuity is secured; and if it be charged on the income and corpus, the fund could be sufficient only to provide by the income and periodical instalments of capital for the annuity during the widow's expectation of life. The stamp duty will be only covenant duty at 5s. per £100 instead of *ad valorem*. The children can deduct their share of the annuity from their income for purposes of income tax and surtax. Stamp duty can, it seems, be saved by providing for payment of a monthly sum.

Form 11

Appointment of New Trustees of Settled Share Under a Will in Place of Retiring Trustees (*a*), the Other Shares having been Paid Over.

Parties.

THIS APPOINTMENT is made the —— day of —— 19— BETWEEN A of *etc.* and B of *etc.* (hereinafter called "the Retiring Trustees") of the one part and C of *etc.* and D of *etc.* (hereinafter called "the New Trustees") of the other part.

Recitals:

WHEREAS:—

will of testator;

(1) X late of —— in the County of —— (hereinafter called "the Testator") by his will dated the —— day of —— 19— after appointing E and F (hereinafter called "the Original Trustees") to be executors and trustees thereof and bequeathing certain pecuniary legacies devised and bequeathed ALL his real estate and the residue of his personal estate to the Original Trustees UPON TRUST to sell and convert the same and to invest the net proceeds of sale (after payment of his funeral and testamentary expenses and debts and the legacies given thereby or by any codicil thereto) in the investments therein mentioned

(*a*) Under s. 37 (1) (b) of the Trustee Act, 1925, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees are appointed for other parts thereof. It is not clear whether this would apply where all the other shares had been already paid over and the trusts thus come to an end. Nor is it clear how far s. 36 (1) enlarges the scope of the power, though it refers to an appointment in place of a trustee who desires to be discharged from "all or any of the trusts or powers reposed in or conferred on him." S. 37 (1) (b) as originally enacted, first in the Conveyancing Act, 1892, and later in the Trustee Act, 1893, stood alone.

Usually where only one settled share remains undistributed, an appointment of trustees of the will generally seems to be the proper form. It is believed, however, that banks are unwilling to be appointed in this way, on the ground that they might become liable for some breach of trust in regard to the shares already paid over, but prefer to be appointed trustees of the remaining share alone. Such an appointment would be valid one way or another; if the trusts of the other shares are to be considered as subsisting, it will operate under s. 37 (1) (b); if not, it will operate as an appointment in effect of trustees of the trusts of the will generally, as the only such trusts subsisting are those of the settled share.

Where there is any doubt as to the dealings with the other shares in the past, lay trustees also may prefer to be appointed in this way.

and TO HOLD the net proceeds of sale and conversion and the investments from time to time representing the same (thereinafter and hereinafter called "the Trust Fund") UPON TRUST as to one equal third part for G absolutely as to one other equal third part thereof for H absolutely and as to the remaining equal third part IN TRUST to pay the income thereof to I (his daughter and hereinafter called "the Daughter") during her life and after her death IN TRUST for all or any the children or child of the Daughter who should attain the age of 21 years or being female marry under that age and if more than one in equal shares

death and probate;

(2) The Testator died on the —— day of —— 19— without having revoked or altered his said will which was on the —— day of —— 19— duly proved and registered by the Original Trustees in the —— Probate Registry

administration of estate;

(3) Shortly after the death of the Testator the Original Trustees paid the funeral and testamentary expenses and debts of the Testator and the duties payable on his death and paid the pecuniary legacies bequeathed by his said will and invested the residue of the proceeds of sale of his residuary estate in investments authorised by his said will (*b*)

payment over of two shares;

(4) The shares of the said G and H in the Trust Fund were in the year 19— paid and transferred to them by the Original Trustees

(5) By an Appointment dated *etc.* the Retiring Trustees were appointed trustees of the said will of the Testator in the place of the Original Trustees who retired from the trusts

investments representing settled share;

(6) The one third share of the Trust Fund directed to be held IN TRUST for the Daughter and her children is now represented by the investments specified in The Schedule hereto standing in the names of the Retiring Trustees

desire to retire and appoint;

(7) The Retiring Trustees are desirous of being discharged from the trusts declared by the said will in relation to the said one third share of the Trust Fund and of appointing the New Trustees to be trustees thereof

(*b*) It is assumed that all the testator's land (if any) was sold.

transfer of investments.

(8) It is intended that the said investments specified in the said Schedule shall [after payment out of such investments of the costs of and incidental to the preparation execution and stamping of this Appointment] be forthwith transferred into the joint names of the New Trustees.

Appointment.

NOW THIS DEED WITNESSETH that in pursuance of the said desire and in exercise of the power for this purpose conferred on them by the statute in that behalf and of every or any other power them enabling in this behalf the Retiring Trustees hereby appoint the New Trustees to be trustees of the trusts declared by the said will of the Testator in relation to the one third share of the Trust Fund thereby directed to be held IN TRUST for the Daughter and her children in the place of themselves the Retiring Trustees or such of the same trusts as are still subsisting and capable of taking effect.

IN WITNESS, *etc.*

THE SCHEDULE *above referred to*

[*This will contain particulars of the investments representing the Daughter's settled share.*]

Form 12

Assignments of Claims for Compensation under Part VI of the Town and Country Planning Act, 1947

Drafted by E. H. Bodkin, Barrister-at-Law

I. ASSIGNMENT BY SEPARATE DEED OF THE WHOLE OF A CLAIM (*a*)

Parties.

THIS ASSIGNMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor") of the one part

(*a*) Claims will now since the Town and Country Planning Act, 1953, and the provisions of the White Paper (Cmd. 8699) in regard to payment of claims, in practice always be assigned to the purchaser on a sale of the land. This is provided for in the Law Society's Conditions of Sale, 1953. No provision is made in the White Paper for payment to the vendor if he retains the claim, which has become in effect an indemnity against

and B of *etc.* (hereinafter called "the Purchaser") of the other part.

WHEREAS:—

Recitals: conveyance of land;

(1) By a conveyance bearing even date herewith and made between the Vendor of the one part and the Purchaser of the other part the freehold property described in the Schedule hereto was in consideration of the sum of £X conveyed by the Vendor to the Purchaser and it was a term of the sale that the claim of the Vendor for compensation under Part VI of the Town and Country Planning Act 1947 in respect of the fee simple in the said property should be assigned to the Purchaser

Notice of claim.

(2) The Vendor duly gave notice to the Central Land Board of his said claim [which has been admitted at the sum of £Y].

NOW THIS DEED WITNESSETH as follows:—

Assignment.

1. IN pursuance of the said agreement and in consideration of the premises the Vendor AS BENEFICIAL OWNER hereby assigns unto the Purchaser ALL THAT the right and title of the Vendor to compensation under Part VI of the Town and Country Planning Act 1947 in respect of the fee simple in ALL THAT the property described in the said Schedule hereto TO HOLD the same unto the Purchaser absolutely.

Covenant to assist in recovery.

2. THE Vendor hereby covenants with the Purchaser that he the Vendor his executors and administrators will if so required by the Purchaser or his successors in title and at the Purchaser's cost in all things do all acts and sign all documents which may be requisite to give the Purchaser the full benefit of the claim hereinbefore assigned.

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

refusal of permission to develop or loss on compulsory acquisition of the land. The approval of the Central Land Board is not required to validate an assignment to a purchaser of the interest in the whole of the land to which it relates, but notice in writing must be given to the Board within one month of the assignment. Where, however, the assignment affects part only of the claim, the Board's approval is necessary and the assignment is of no effect until it is obtained. As to the practice, see the Central Land Board's leaflet (Assignments 1). It does not appear to be material whether the assignment is made by separate deed or included in the conveyance (see Precedent III, *post*).

II. ASSIGNMENT OF CLAIM IN RELATION TO PART OF THE LAND (*b*)

Parties. THIS ASSIGNMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor") of the one part and B of *etc.* (hereinafter called "the Purchaser") of the other part.

Recitals. WHEREAS:—

(1) [Conveyance of land and agreement to assign part of claim affecting land adopt Recital (1) of last Precedent]

(2) The Vendor duly gave notice to the Central Land Board of his claim to compensation in respect of the fee simple in the entirety of the property known as —— of which the said property described in the said Schedule hereto forms part and [the said claim in respect of such entirety has been admitted at the sum of £Y].

NOW THIS DEED WITNESSETH as follows:—

Assignment. 1. IN pursuance of the said agreement and in consideration of the premises the Vendor AS BENEFICIAL OWNER hereby assigns unto the Purchaser ALL THAT the right and title of the Vendor to compensation under Part VI of the Town and Country Planning Act 1947 attributable under any existing or future statute or otherwise to the fee simple in ALL THAT the freehold property described in the said Schedule hereto TOGETHER with full power to agree recover and receive the same TO HOLD unto the Purchaser absolutely.

Covenant to assist in recovery. 2. THE Vendor hereby covenants with the Purchaser and his successors in title that he the Vendor his executors and administrators will if so required by the Purchaser or his successors in title and at the Purchaser's cost in all things do or join in doing all acts and sign all documents which may

(*b*) In this case the approval of the Central Land Board will be required: see note to last Precedent. Arrangements will have to be made with the Board to effect the necessary apportionment of the claim. If for any reason they will not do so, it may be necessary to ascertain the due proportion in some other way. Under the Law Society's Conditions of Sale, 1953, this will be done by arbitration. If the assignment is made in the conveyance of the land, it should be provided that refusal of leave to assign will not affect the conveyance.

be requisite to give the Purchaser the full benefit of the apportioned claim hereinbefore assigned

AND HEREBY irrevocably appoints the Purchaser and his successors in title to be his attorney in the name of the Vendor his executors and administrators or otherwise to do or join in doing all or any of such acts or sign any such documents as aforesaid.

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

III. CONVEYANCE OF FREEHOLDS TOGETHER WITH CLAIM TO COMPENSATION

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor") of the one part and B of *etc.* (hereinafter called "the Purchaser") of the other part. Parties.

WHEREAS:—

Recital of title to lands.

(1) The Vendor is the estate owner of the fee simple in possession free from incumbrances of the property hereinafter assured and has agreed to sell the same to the Purchaser together with the right to compensation under Part VI of the Town and Country Planning Act 1947 in respect thereof [which claim has been admitted at the sum of £Y] for the sum of £X.

NOW THIS DEED WITNESSETH as follows:—

Conveyance of land.

1. IN pursuance of the said agreement and in consideration of the sum of £X now paid by the Purchaser to the Vendor (the receipt and payment whereof the Vendor hereby acknowledges) the Vendor AS BENEFICIAL OWNER hereby conveys unto the Purchaser

ALL THAT, *etc.*

TO HOLD unto the Purchaser in fee simple.

Assignment of claim.

2. IN further pursuance of the said agreement and for the consideration aforesaid the Vendor hereby assigns unto the Purchaser ALL THAT the right and title of the Vendor to compensation under Part VI of the Town and Country Planning Act 1947 in respect of the fee simple in the property hereinbefore conveyed TO HOLD unto the Purchaser absolutely.

3. [Covenant to assist in recovering claim see Clause 2 of Precedent I.]

4. [Acknowledgment for production of documents.]

5. [Certificate of value.]

IN WITNESS, *etc.*

Form 13

Tenancy Agreement for a First Letting at a Progressive Rent.

Parties. THIS AGREEMENT made this —— day of —— BETWEEN A of *etc.* (hereinafter called "the Landlord") of the one part and B of *etc.* (hereinafter called "the Tenant") of the other part WITNESSES as follows:—

Agreement to let. 1. THE Landlord agrees to let and the Tenant agrees to take ALL THAT flat or suite of rooms and offices known as Flat No. —— on the —— floor of the mansion known as No. —— —— Street in the Borough of —— in the County of —— and also the coal cellar No. —— in the basement of the said mansion (which flat and cellar are hereinafter referred to as the flat and cellar respectively) together with the appurtenant rights and subject to the exceptions and reservations hereinafter respectively mentioned from the —— day of —— next at the rents hereinafter mentioned

Term.

Appurtenant rights. 2. THERE shall be appurtenant to the flat and cellar and the Tenant shall have the right to use in common with the Landlord and his other tenants and persons authorised by them respectively the entrance hall staircases lifts and passages leading to the flat and cellar and also the gas and water-pipes and electric wires in the mansion for the service of the flat and cellar

Reservations. 3. THERE shall be excepted and reserved to the Landlord and the flat and cellar shall be subject to the right of the Landlord to the free and uninterrupted passage of gas water and electricity through the pipes and wires which now are or may at any time hereafter be in on or passing through the flat or cellar with power to the Landlord or his servants and

workmen at all reasonable times to enter the flat and cellar for the purpose of inspecting repairing placing or altering the said pipes and wires and also of painting and repairing the outside wood and iron work and the exterior walls and roof of the mansion and so that such inspections repairs and alterations shall be done with despatch and the Landlord shall make good all damage done in doing the said inspections or repairs or alterations to the flat or cellar and to all decorations fixtures and chattels therein

Rent.

4. DURING the first year of the said term of three years the Tenant shall pay the monthly rent of £— during the second year of the said term the Tenant shall pay the monthly rent of £— and during the third year of the said term the Tenant shall pay the monthly rent of £— and each of such monthly rents aforesaid shall be paid in advance for each calendar month without deduction (except for land tax and landlord's property tax) on the —— day of each month Provided that if upon any application to a tribunal made under section 1 of the Landlord and Tenant (Rent Control) Act 1949 such tribunal determines what rent is reasonable for the dwelling house hereby agreed to be let and as from the date of such tribunal's determination and under the provisions of the said section the standard rent of the said dwelling-houses is or is at a rate of less than £— monthly (being the maximum rent hereinbefore mentioned) then as from the date of such tribunal's determination and throughout the remainder of the term the Tenant shall pay monthly in advance (such payments to be made on the —— day of each month) in lieu of the monthly rents aforesaid a monthly rent at the rate of such rent as is calculated by adding to the standard rent as determined by such tribunal the amount (if any) of the excess determined by the tribunal in accordance with subsection (3) of the said section and so that in respect of the periods before and after the date of such determination being the periods respectively commencing and ending on the —— day of a month occurring last before and on the fifteenth day of a month occurring first after the date of such determination the

appropriate monthly rent shall be apportioned as from day to day

Rates.

5. The Tenant shall pay all the rates and taxes which now are or may at any time hereafter be assessed or charged upon the demised premises or the occupier thereof the land tax and the landlord's property tax alone excepted

Repairs.

6. The Tenant shall well and substantially repair cleanse maintain amend and keep the inside of the flat and cellar and the landlord's fixtures therein (unless the same shall be destroyed or damaged by fire explosion or any other means not arising from the act or default of the Tenant or of any person being a servant of the Tenant or being in the flat or cellar with his express or implied permission) and in particular will as occasion requires thoroughly sweep all chimneys and flues used for the flat and cellar and clean all windows and all cisterns boilers and water pipes and keep all ball cocks and pipes gas pipes and electric wires in the flat or cellar in good order and condition

Agreement to paint.

7. In the last three months of the said term of three years (and also by way of further obligation if the Tenant by agreement or otherwise continues to occupy the flat and cellar as a contractual or statutory tenant after the expiration of the said term of three years in the last three months of the tenancy and in the meantime in every fifth year) the Tenant shall paint all the inside wood and iron work usually painted with three coats of good oil and white lead paint in a proper and workmanlike manner and also wash distemper and whiten all ceilings and colour all walls and re-paper the rooms of the flat

Not to cause annoyance, etc.

8. The Tenant shall not do or suffer to be done anything which may be or grow to the injury or annoyance of the Landlord or any other tenants or occupiers of the mansion or which may render the Landlord liable to pay in respect of the mansion or any part thereof more than the ordinary or present rate of premium for insurance against fire or which may make void or voidable any policy for such insurance

9. The Tenant shall not assign or underlet or part with the possession of the premises or any part thereof

10. THE Tenant shall not without the written consent of the Landlord take any lodgers or allow to reside with him in the flat any person being a member of the Tenant's family (*a*) other than the following persons . . . Lodgers, etc.

11. THE Landlord hereby agrees with the Tenant that the Tenant duly paying the rent and observing and performing the agreements hereinbefore contained may peaceably hold the flat and cellar during the said term of three years without any disturbance by the Landlord or any person claiming under him Quiet enjoyment.

12. FOR the purpose of facilitating access to the flat and cellar the Landlord shall keep the said entrance hall staircases lifts and passages leading to the flat and cellar adequately lighted (*b*) Lighting.

13. THE Landlord shall at his own cost provide a sufficient supply of water for ordinary domestic use in the flat (*c*)

14. IF at any time before —— (*d*) the Tenant shall give to the Landlord one month's notice in writing of the Tenant's desire to surrender the Tenancy (such notice to expire on the

---

(*a*) See the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 12 (1) (g).

(*b*) This provision will not make the contract one to which s. 2 (1) of the Furnished Houses (Rent Control) Act, 1946, applies: see definition of "services" in *ibid.* s. 12 (1).

(*c*) This provision will have the effect of modifying Clause 5 above in that it will relieve the tenant of the burden of paying a water rate. If it is desired that the tenant should bear this burden substitute for Clause 13 the following:—

> "The Landlord shall provide a sufficient supply of water for ordinary domestic use in the flat and the Tenant shall reimburse the Landlord in respect of the water rate charged for such supply. The water rate charged for such supply shall be deemed to be [here insert the appropriate fraction] of the water rate charged in respect of the supply of water for ordinary domestic use to the whole mansion."

The supply of water furnished under this provision would not constitute "services" for the purpose of the Furnished Houses (Rent Control) Act, 1946: see s. 12 (1) thereof.

(*d*) Insert such date as is desired. It is suggested that a date six months before the expiration of the three-year term would be suitable. The tenant would then be unable to surrender the tenancy in the last six months of the term and would consequently be liable under his repairing agreements to the full extent of his liability. If the agreement contains an absolute prohibition on assignment a provision giving the tenant a right to surrender on satisfaction of his liabilities to decorate and repair is desirable.

—— day of any month of the tenancy) and shall before the expiration of such notice repair and paint the premises in accordance with the provisions of clauses 6 and 7 hereof as if the expiration of the said notice was the end of the said term of three years or shall upon the expiration of such notice pay to the Landlord a sum calculated in the manner hereinafter mentioned in satisfaction of the Tenant's liability to repair and decorate the flat the Landlord shall upon the expiration of such notice accept a surrender of the tenancy

15. THE sum mentioned in the preceding clause hereof shall be calculated as follows that is to say:—

(i) If such notice as aforesaid expires in the first half year of the tenancy the sum shall be £—

(ii) If such notice as aforesaid expires in the second half year of the tenancy the sum shall be £—

(iii) If such notice as aforesaid expires in the third half year of the tenancy the sum shall be £—

(iv) If such notice as aforesaid expires in the fourth half year of the tenancy the sum shall be £— and

(v) If such notice as aforesaid expires in the fifth half year of the tenancy the sum shall be £— (*e*)

16. IF any rent shall be in arrear for one month (whether legally demanded or not) or if there shall be any breach by the Tenant of the agreements conditions and provisions herein contained or any of them the Landlord may without giving any notice to quit re-enter on the premises and dispossess the Tenant thereof.

AS WITNESS, *etc.*

(*e*) This assumes that the date mentioned in Clause 14 is six months before the expiration of the three-year term. It is apprehended that a sum paid under these provisions would not be a "premium" within the meaning of that term in the Landlord and Tenant (Rent Control) Act, 1949: see s. 18 (2) thereof; and see *R.* v. *Fulham, Hammersmith and Kensington Rent Tribunal, Ex p. Philippe* [1950] 2 All E.R. 211.

Form 14

Tenancy Agreement for the Letting of the Upper Floor of a House, the Tenant Sharing Accommodation with the Landlord.

AN AGREEMENT made the —— day of —— BETWEEN A of *etc.* (hereinafter called "the Landlord" which expression *etc.*) of the one part and B of *etc.* (hereinafter called "the Tenant" which expression *etc.*) of the other part. Parties.

WHEREBY IT IS AGREED AND DECLARED as follows:—

1. THE Landlord agrees to let and the Tenant agrees to take ALL that flat or suite of rooms on the first floor of the house known as No. —— Road in the Borough of —— in the County of —— (hereinafter called "the flat") TOGETHER with the rights and subject to the exceptions and reservations hereinafter respectively mentioned Agreement to let.

2. THE following rights shall be included in the tenancy that is to say:—

(i) The Tenant and his licensees shall have the right to use in common with the Landlord and other the occupiers or tenants for the time being of the other part of the said house and persons authorised by them respectively the entrance hall and staircase leading to the flat for the purpose of access to the flat and also the right to use the gas and water pipes and electric wires in the said house for the service of the flat

(ii) The Tenant and the other occupiers of the flat shall have the right to use in common with the Landlord and other the occupiers or tenants for the time being of the other part of the said house the kitchen on the ground floor of the said house at the times and subject to the conditions hereinafter mentioned (*a*)

(iii) The Tenant shall have the right to store coal and other fuel in the cellar numbered 2 at the rear of the said house and the right to keep a dustbin in the back garden of the said house

(*a*) This contemplates that at the date of the agreement the landlord is in occupation of the ground floor of the house.

and the Tenant and his licensees shall have the right to pass and repass over and along the paths and passages leading to the said cellar and such dustbin as aforesaid and therefrom respectively to the flat

3. THE following conditions shall apply to the use of the kitchen:—

(i) The Tenant shall have the right to use the kitchen at the following times that is to say:—

[*Here set out particulars of the times at which the Tenant may use the kitchen*]

(ii) The Tenant may store domestic and cooking utensils and dry stores in the cupboards and drawers on the —— wall of the kitchen

(iii) The Tenant may use the kitchen sink and the cooker at the times aforesaid and shall on each occasion of using the same leave the same sink and cooker in a clean and tidy condition

4. THERE shall be excepted out of the tenancy and reserved to the Landlord the free and uninterrupted passage of gas water and electricity through the pipes and wires which now are or may at any time hereafter be in on or passing through the flat with power for the Landlord his servants and workmen at all reasonable times to enter the flat for the purpose of inspecting repairing placing or altering the said pipes and wires and also of painting and repairing the outside wood and iron work and the exterior walls and roof of the said house and so that such inspections repairs and alterations shall be done with despatch and the Landlord shall make good all damage done in doing the said inspections or repairs or alterations to the flat and to all decorations fixtures and chattels therein

5. THE Tenancy shall be from the —— day of —— 19— for one month certain and thereafter from month to month until it is determined at the end of the second or any subsequent month by either party giving to the other not less than one month's notice in writing AT THE MONTHLY RENT of £— payable monthly in advance the first of such payments to be made on the signing hereof in respect of the month ending —— together with the sum of £— in respect of period from the date of

commencement of the term until —— and the second and each subsequent monthly payment to be made on the —— day in each month

6. THE Tenant hereby agrees with the Landlord as follows:—

(i) That he will pay the rent at the times and in manner aforesaid without any deduction whatsoever (except for land tax and landlord's property tax)

(ii) That he will keep the premises in good repair during the tenancy and deliver up the same premises in good repair at the end of the tenancy.

(iii) That he will use the flat as a private dwelling-house only

(iv) That he will not without the consent in writing of the Landlord assign charge underlet or part with the possession of the premises or any part thereof

(v) That he will not without the written consent of the Landlord take any lodgers or allow to reside with him any member of the Tenant's family not being one of the following persons:— [*Here name the permitted residents*] (*b*)

(vi) That he will not do or suffer to be done anything which may be or grow to the annoyance of the Landlord or any other tenants or occupiers of the said house or which may render the Landlord liable to pay in respect of the said house or any part thereof more than the ordinary or present rate of premium for insurance against fire, or which may make void or voidable any policy for such insurance

7. THE Landlord hereby agrees with the Tenant as follows:—

(i) That the Tenant duly paying the rent and observing and performing the agreements hereinbefore contained may peaceably hold the premises during the continuance of the tenancy without any disturbance by the Landlord or any person claiming under him

(ii) That the Landlord shall at his own cost provide a

(*b*) This provision may sometimes be useful: see the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 12 (1) (g).

sufficient supply of water for ordinary domestic use in the flat and in the kitchen

(iii) That for the purpose of facilitating access to the flat the Landlord shall keep the said entrance hall and staircase adequately lighted

(iv) That the Landlord will pay all rates and outgoings in respect of the premises

8. IF any rent shall be in arrear for one month (whether legally demanded or not) or if there shall be any breach by the Tenant of the agreements conditions and provisions herein contained or any of them the Landlord may without giving any notice to quit re-enter on the premises and dispossess the Tenant thereof

9. IN this Agreement "month" means calendar month.

AS WITNESS, *etc.*

Form 15

Lease of a Flat at a Rent Less Than Two Thirds of the Rateable Value and in Consideration of a Premium

Parties. THIS LEASE made the —— day of —— BETWEEN A of *etc.* (hereinafter called "the Lessor" which expression *etc.*) of the one part and B of *etc.* (hereinafter called "the Lessee" which expression *etc.*) of the other part.

WHEREAS

Assessment. 1. THE flat hereby demised was first assessed on —— and the said flat was then assessed at a net rateable value of £—— (*a*).

(*a*) Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value, the Rent Acts do not apply to the tenancy: Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 12 (7). The prohibition on the requirement of a premium in addition to the rent contained in s. 2 of the Landlord and Tenant (Rent Control) Act, 1949, does not apply to such a tenancy: see s. 2 (3) of the 1949 Act. "Rateable value" means the rateable value on August 3, 1914, or, in the case of premises which would be subject to old control, if the dwelling-house was first assessed after that date, the rateable value at which it was first assessed; and in the case of premises which would be

2. THE Lessor has agreed to let the said flat to the Lessee for the term hereinafter appearing in consideration of the payment by the Lessee of the premium hereinafter mentioned and in consideration of a rent of £—— yearly being a rent of less than two thirds of the said rateable value. Agreement.

NOW THIS LEASE WITNESSETH as follows:—

1. IN consideration of the sum of £—— now paid by the Lessee to the Lessor (the receipt of which sum the Lessor hereby acknowledges) and of the rents and covenants on the part of the Lessee and the conditions hereinafter reserved and contained the Lessor hereby demises unto the Lessee ALL THAT flat or suite of rooms known as Flat No. —— on the —— floor of the mansion known as —— in the Parish of —— in the County of —— (hereinafter called "the Flat") together with the right for the Lessee and all persons authorised by him to use in common with the Lessor and his tenants of the other flats in the said mansion and all persons authorised by him or them or any of them respectively for the purpose of access to the Flat the entrance drive entrance hall passages and staircases leading from and to the public roadway to and from the Flat TOGETHER also with the right for the Lessee and his guests in common with the Lessor and his tenants of such other flats as aforesaid and their respective guests to use the said driveway as a parking place for motor vehicles the Lessee and his guests not causing any obstruction of the said driveway by such use AND TOGETHER with the free running and passage of water soil gas and electricity through the sewers drains pipes wires cables and meters situated in and passing through the Flat to or from any other part of the said mansion and such adjoining land as aforesaid with the right (by way of exception and reservation) for the Lessor with servants and workmen at all reasonable times to enter the Flat for the purpose of inspecting Demise. Parcels.

subject to new control, the rateable value on April 6, 1939, or on the first assessment thereafter if the premises were not then assessed: see s. 12 (1) (e) of the 1920 Act and the First Schedule to the Act of 1939. If the relevant rateable value is the rateable value on August 3, 1914, or the rateable value on April 6, 1939, this recital will be amended to read: "The net rateable value of the flat hereby demised on August 3, 1914 (April 6, 1939), was £——."

repairing replacing or altering the said sewers drains pipes wires cables and meters and also of painting and repairing the outside wood and iron work and the exterior walls and roof of the said mansion and so that all such works shall be done with despatch and the Lessor shall make good all damage done to the Flat in effecting the same works TO HOLD the same unto the Lessee from the —— day of —— for the term of twenty-one years PAYING THEREFOR yearly during the said term hereby granted unto the Lessor the rent of £—— (*b*) to be paid without any deduction except for landlord's property tax by equal half-yearly payments on the —— day of —— and the —— day of —— in every year the first of such payments to be made on the —— day of —— next and the last payment to be made in advance one calendar month before the expiration of the said tenancy or immediately after the determination thereof in the event of the same being determined by re-entry under the proviso in that behalf hereinafter contained.

Term.

Rent.

Lessee's covenants.

2. THE Lessee hereby covenants with the Lessor in manner following that is to say:—

(1) That the Lessee will, during the continuance of the term hereby granted, pay the said yearly rent hereinbefore reserved and made payable at the times and in the manner at and in which the same is hereinbefore reserved and made payable without any deduction (except as aforesaid).

(2) And also will from time to time, and at all times during the said term, pay and discharge all rates, taxes, duties, charges assessments and outgoings whatsoever (whether parliamentary, parochial, local or of any other description) which are now or may at any time hereafter be assessed, charged, or imposed upon or payable in respect of the said demised premises, or the owner or occupier in respect thereof the landlord's property tax only excepted.

(3) And also will in the year —— and in the year —— and also in the last year of the said term paint all the inside wood and iron work usually painted of the said demised premises with

(*b*) This rent will be a rent less than two-thirds of the rateable value.

three coats of good oil and white-lead paint in a proper and workmanlike manner.

(4) And also will during the said term keep all the said premises and the fixtures painting, papering and decorations thereof in good and tenantable repair, order and condition internally and externally.

(5) And the said demised premises so painted repaired cleansed maintained amended and kept as aforesaid will, at the expiration or sooner determination of the said term, quietly yield up unto the Lessor together with all additions and improvements made thereto in the meantime and all fixtures of every kind in or upon the said premises or which during the said term may be affixed or fastened to or upon the same.

(6) And also that it shall be lawful for the Lessor or his agents twice or oftener in every year during the said term, during seasonable hours in the daytime with or without workmen or others, to enter the said premises to view the state of repair and condition of the same, and of all defects and wants of reparation then and there found and which the Lessee shall be liable to make good under the covenants hereinbefore contained to give or leave on the said premises notice in writing to the Lessee: And that the Lessee will within the period of three calendar months after such notice, or sooner if requisite, repair and make good the same according to such notice and the covenant in that behalf hereinbefore contained.

(7) And also will repay to the Lessor one fourth part of all sums which he shall expend in pursuance of the covenant by the Lessor hereinafter contained for insuring the said mansion and premises against fire every such sum to be so repaid on the half-yearly day for payment of rent under this demise next ensuing after the expenditure thereof (*c*).

(*c*) It is apprehended that sums paid to the Lessor under this covenant will not fall to be taken into account as rent in determining whether the rent is less than two-thirds of the rateable value. If, however, the amount of the insurance premiums was reserved as rent, that amount would be calculated as part of the rent for the purpose of determining whether the rent was less than two-thirds of the rateable value.

(8) And also will use and occupy the flat as a single private residence only and for no other purpose.

(9) And also that the Lessee will within three calendar months next after any absolute transfer, assignment or devolution of his interest under this present lease in the said demised premises, or any part thereof, give notice in writing of such transfer, assignment, or devolution, and of the name, quality, and place or places of abode of the transferee or transferees or assignee or assignees to the Lessor or his solicitor, and produce to him the instrument of such transfer assignment or devolution and pay to him a fee of £2 for the registration of such notice.

(10) And also will not assign transfer underlet or part with the possession of the said premises or any part thereof or part with or share the possession or occupation thereof or of any part thereof (otherwise than by will) without the previous consent in writing of the Lessor.

Proviso for re-entry.

3. PROVIDED always and these presents are upon this condition that if the said yearly rent hereby reserved or any part thereof shall at any time be in arrear and unpaid for twenty-one days after the same shall have become due (whether any formal or legal demand therefor shall have been made or not) or if the Lessee shall at any time fail or neglect to perform or observe any of the covenants, conditions, or agreements herein contained and on his part to be performed and observed or if the Lessee, while the said demised premises or any part thereof shall remain vested in him, shall become bankrupt or have a receiving order made against him or enter into any arrangement or composition for the benefit of his creditors, or permit any execution to be levied on the demised premises, or if the assigns of the Lessee being a Company shall enter into liquidation whether compulsory or voluntary, not being merely a voluntary liquidation for the purpose of amalgamation or reconstruction then and in any such case it shall be lawful for the Lessor, or any person or persons duly authorised by him in that behalf into or upon the said hereby demised premises, or any part thereof in the name of the whole, to re-enter and the said premises peaceably to hold and

enjoy thenceforth, as if these presents had not been made, without prejudice to any right of action or remedy of the Lessor, in respect of any antecedent breach of any of the covenants by the Lessee hereinbefore contained.

4. AND the Lessor hereby covenants with the Lessee in manner following that is to say:— Lessor's covenants.

(1) That the Lessor will at all times during the said term keep the outer walls roof and outside of the said mansion in proper and substantial repair.

(2) And also will at all times during the said term (unless such insurance shall be vitiated by an act of the Lessee) insure and keep insured the said mansion premises against loss or damage by fire in some insurance office of repute in the sum of £—— at the least, and will, whenever required, produce to the Lessee the policy or policies of such insurance, and the receipt for the last premium for the same: And further that in case of destruction of or damage to the said premises or any part thereof by fire, the Lessor will, with all convenient speed spend and lay out all moneys received in respect of such insurance in rebuilding or reinstating in a good and substantial manner the premises so destroyed or damaged and in case such moneys shall be insufficient for such purpose will make good such deficiency out of his own moneys.

(3) And that the Lessee paying the rent hereby reserved, and performing and observing the several covenants, conditions and agreements herein contained, and on his part to be performed and observed shall and may peaceably and quietly hold and enjoy the said premises hereby demised during the term hereby granted without any lawful interruption or disturbance from or by the Lessor, his successors in title, or any person or persons claiming under or in trust for him or them.

IN WITNESS, *etc.*

Form 16

Tenancy Agreement for the Letting of a House Furnished for a Fixed Term

Parties. THIS AGREEMENT made this —— day of —— BETWEEN A of *etc.* (hereinafter called "the Landlord") of the one part and B of *etc.* (hereinafter called "the Tenant") of the other part WITNESSES as follows:—

Agreement to let. 1. THE Landlord agrees to let and the Tenant agrees to take the Dwelling-house and premises situated in —— Street in the Borough of —— in the County of —— and known as No. —— —— Street aforesaid furnished as stated in the inventory set out in the Schedule hereto for the term and at the rent hereinafter mentioned.

Term. 2. THE term shall commence on —— and shall end on —— and on the date last mentioned the Tenant shall deliver up possession of the premises to the Landlord in accordance with the agreement in that behalf hereinafter contained (*a*).

3. THE rent shall be £—— monthly payable monthly in advance the first of such payments to be made on —— and the second and each subsequent monthly payment to be made on the —— day of each month.

Tenant's liabilities. 4. THE Tenant hereby agrees:—

(1) To pay the said rent at the times and in manner aforesaid.

(2) To replace and make good all breakages deficiencies and damage to the furniture fixtures, fittings and effects in the said dwelling-house and premises, which may happen during the

(*a*) Under the Furnished Houses (Rent Control) Act, 1946, s. 5, if a contract has been referred to a tribunal, and thereafter a notice to quit is served on the lessee at any time before the decision of the tribunal is given or within three months thereafter, the notice does not take effect before the expiration of the said three months. The tribunal has power under the section to direct that a shorter period than three months shall be substituted. Under the Landlord and Tenant (Rent Control) Act, 1949, s. 11, when a reference to a tribunal is pending and a notice to quit has been served, the lessee may apply to the tribunal during the currency of the notice to quit for an extension of the period at the end of which the notice takes effect. These provisions are not applicable where the tenancy determines under the provisions of the contract by expiration of the term.

period of his tenancy (except reasonable use and wear and damage by accidental fire).

(3) At the expiration of the said tenancy, to deliver up to the landlord possession of the premises with the whole of the said furniture and effects according to the said inventory, and in the same rooms in which the same now are, in as sound, perfect and clean a condition as at the commencement of the said tenancy (except as aforesaid).

(4) To use the premises as a single private residence and for no other purpose.

(5) Not without the consent of the Landlord to remove from the said dwelling-house the furniture and chattels specified in the schedule hereto or any of them.

(6) To pay to the Landlord the sum expended by the Landlord at the end of the term upon the cleaning and washing of the articles specified in Part II of the Schedule hereto.

(7) To pay for the cleansing of the premises or such part thereof as may require cleansing and for the washing of such articles as may require washing in addition to the articles specified in Part II of the Schedule hereto.

(8) In the event of any infectious disease which may require notification by virtue of any Statute or order made thereunder, happening in the said house during the said tenancy, to give written notice thereof, and any other information which may be required relative thereto, to the Landlord or his agent, before or immediately upon the expiration of the tenancy, and to pay to the Landlord the expenses of disinfecting the premises, and replacing any articles and things the destruction of which may be rendered necessary by such illness or may be injured by such disinfecting and in case of default in giving such notice as aforesaid to pay to the Landlord in addition the sum of £—— as liquidated damages.

(9) Not to assign underlet or part with his interest under this agreement.

(10) To pay to the Landlord on the signing hereof the sum of £—— being the amount of the premium paid by the Landlord in respect of the insurance of the premises and the furniture and chattels specified in the Schedule hereto against damage by fire.

(11) Not to do or suffer to be done upon the premises any thing which may render any increased or extra premium payable for the insurance of the premises and the furniture and chattels aforesaid against fire or which may make void or voidable any policy for such insurance.

(12) To pay for all gas and electricity consumed in or about the premises during the term and to pay for any water (other than the domestic supply covered by the water rate paid by the Landlord) consumed in or about the premises.

Provision for re-entry.

5. IN case of non-payment of rent (whether formally or legally demanded or not) or breach of this agreement by the Tenant, the Landlord shall be at liberty to re-enter and take possession of the premises, without prejudice to his right to recover all rent then in arrear and any damages for breach of this Agreement.

AS WITNESS, *etc.*

Particulars of furniture and furnishings.

THE SCHEDULE

FIRST PART

[*To contain particulars of furniture and other articles not specified in Part II.*]

SECOND PART

[*To contain particulars of furnishings and other articles which are to be washed and cleaned at the end of the term at the expense of the Tenant.*]

Form 17

Conveyance to the Diocesan Authority of a Diocese for a Parochial Church Council pursuant to the Parochial Church Councils (Powers) Measures, 1921 and 1949 (*a*).

Parties.

THIS CONVEYANCE [DEED OF GIFT] is made the —— day of—— 19— pursuant to the Parochial Church Councils (Powers) Measures 1921 and 1949 (hereinafter referred to respectively as "the Measure of 1921" and "the Measure of 1949") BETWEEN

(*a*) Stamp *ad valorem.*

—— of —— (hereinafter referred to as "the Vendor" ["the Donor"]) of the first part The Parochial Church Council of The Parish of —— in the County of —— and Diocese of —— (hereinafter referred to as "the Council") of the second part and —— having its registered office at —— (hereinafter referred to as "the Authority") of the third part

Recitals of seisin;

WHEREAS the Vendor [Donor] is seised of the property described in the First Schedule hereto (hereinafter referred to as "the Said Property") for an estate in fee simple in possession free from incumbrances.

of the authority;

AND WHEREAS the Authority is the Diocesan Authority for the said Diocese for the purposes of section 5 of the Measure of 1921.

of agreement for purchase;

AND WHEREAS the Council in exercise of the powers contained in section 5 of the Measure of 1921 (as extended by section 1 of the Measure of 1949) has agreed with the Vendor for the purchase from him/her of the said property at the price of £— *or*

of gift;

[AND WHEREAS the Donor is desirous of giving the said property to the Council pursuant to and for the purposes referred to in section 5 of the Measure of 1921 (as extended by section 1 of the Measure of 1949).]

of consent of authority.

AND WHEREAS the Authority has pursuant to section 5 of the Measure of 1921 consented to the acquisition by the Council of the said property subject to the vesting of the legal interest therein in the Authority in accordance with the said section and to the indemnity hereinafter contained.

NOW THIS DEED WITNESSETH as follows:—

Conveyance.

1. In pursuance of the said Agreement and in consideration of the sum of £— paid to the Vendor by the Council (the receipt whereof the Vendor hereby acknowledges) the Vendor AS BENEFICIAL OWNER [or for effectuating his/her said desire and in consideration of the premises the Donor as Settlor] in pursuance of section 5 of the Measure of 1921 and by direction of the Council hereby conveys unto the Authority ALL the said property TO HOLD the same unto the Authority in fee simple.

Agreement as to user.

2. IT is agreed by and between [the Donor] the Council and the Authority as follows:—

(a) The said property has been acquired and will be used by the Council for [such of] the purposes specified in section 5 of the Measure of 1921 as extended by section 1 of Measure of 1949 [as are charitable]

(b) The Council will keep the Authority indemnified in respect of the several matters set forth in the Second Schedule hereto and against all costs proceedings claims and demands in respect of the same.

3. In the event of the site of the said property by order or lawful authority becoming situate in another parish or conventional district then the Authority may by deed declare that thenceforth it holds the said property in trust for the Parochial Church Council of such other parish or conventional district and thereupon this Deed shall thenceforth be construed as if the expressions "the said parish" and "the Council" herein contained referred to such new parish or conventional district and the Parochial Church Council thereof respectively.

Certificate of value.

[4. *Certificate of value if appropriate for stamp duty.*]

In witness whereof the Vendor [Donor] has hereunto set his hand and seal the Chairman presiding and two other members at a meeting of the Council (pursuant to section 3 of the Measure of 1921) have on behalf of the Council hereunto set their respective hands and seals and the Authority has caused its Common Seal to be hereunto affixed the day and year first above written.

The First Schedule above referred to

[*Description of Property acquired.*]

The Second Schedule above referred to

[*Liabilities assumed by the Council.*]

1. All matters of liability subject to which the said property is assured or which now are or may hereafter be incident to the property.

2. All rates taxes insurances premiums and other outgoings of whatever nature which may from time to time be payable in respect thereof.

3. All costs charges and expenses incurred by the Authority in relation to the acquisition of assurance of the said property as trustee thereof.

SIGNED SEALED AND DELIVERED by the Vendor [Donor] in the presence of

SIGNED SEALED AND DELIVERED by being the Chairman and by and being two other members of a meeting thereof held on day of in the presence of

THE COMMON SEAL of the Authority was hereunto affixed in the presence of .

NOTE:—This Deed must be recorded with the Charity Commissioners within six months of its date pursuant to section 29 (4) of the Settled Land Act 1925.

Form 18

Conveyance on Sale of Freeholds by a Company in Liquidation (*a*)

Drafted by B. A. Bicknell, of Lincoln's Inn

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN the A Company whose registered office is situate at Parties.

(*a*) Stamp *ad valorem*. It has been the general practice in the past where a company is in liquidation for any conveyance of the company's property to be expressed to be made by the liquidator in the name and on behalf of the company. He is generally expressed in the recitals to enter into the agreement for sale and in the operative part he is expressed to

etc. (hereinafter called "the Company") of the first part B of *etc.* (hereinafter called "the Liquidator") of the second part and C of *etc.* (hereinafter called "the Purchaser") of the third part.

Recitals:

WHEREAS:—

Title of company;

(1) The Company is the estate owner in respect of the fee simple of the property hereby assured free from incumbrances

declaration of solvency;

(2) At a meeting of the directors of the Company held on the —— day of —— in contemplation of the winding up of the Company the majority of the said directors made a statutory declaration to the effect that they had made a full inquiry into the affairs of the Company and that having done so they had formed the opinion that the Company would be able to pay its debts in full within a period not exceeding twelve months from the commencement of the said winding-up which said statutory declaration was on the —— day of —— delivered to the Registrar of Companies for registration

resolution to wind up;

(3) At a general meeting of the Company duly convened by notices sent out on the —— day of —— and held on the —— day of —— the Company resolved by special resolution

---

give a receipt for the purchase-money and as trustee to grant and confirm. It appears that, where the Official Receiver is appointed liquidator of a company, he refuses on a sale of the company's land himself to be expressed in the conveyance to give any receipt for the purchase-money or to be expressed to be a conveying party. He merely joins to covenant that he has not been party or privy to anything which could prevent the company conveying. This practice is logically correct and the above form is intended to give effect to it. On a winding up the legal and equitable estate in a company's lands remain in the company, unless they have been vested in the liquidator by an order made under s. 244 of the Companies Act, 1948. When no such order has been made, the liquidator acts under the powers conferred by s. 245 (2) which provides:—

> "(2) The liquidator in a winding up by the court shall have power—(a) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels; (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal."

The same powers are exercisable by a liquidator in a voluntary winding up: see s. 303 (1) (b). The general practice would accordingly appear to be incorrect and its adoption unnecessarily to complicate the form of conveyances by liquidators.

that the Company be wound up voluntarily and at the said meeting the Liquidator was appointed liquidator of the Company for the purpose of winding up the affairs and distributing the assets of the Company

(4) Notices of the said resolutions were published in the London Gazette of the —— day of —— publication of resolutions to wind up;

[*alternative recitals where the company is in compulsory liquidation*:

(2) By an order of the Chancery Division of the High Court of Justice made by Mr. Justice —— on the —— day of —— on the hearing of a petition in the Matter of the Companies Act 1948 and of the Company it was ordered that the Company should be wound up by the court under the provisions of the Companies Act 1948 and by an order of the said Division made by Mr. Justice —— on the —— day of —— the Liquidator was duly appointed liquidator of the Company] order to wind up;

(5) The Company has agreed with the Purchaser for the sale and transfer to him of the fee simple of the said property hereby assured free from incumbrances for the sum of £—— and the Liquidator has agreed to join in these presents in manner hereinafter appearing. agreement for sale.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement as follows:— Witnesseth.

1. IN consideration of the sum of £—— now paid by the Purchaser to the Company (the receipt whereof the Company hereby acknowledges) the Company as beneficial owners (*b*) hereby grant unto the Purchaser ALL THAT *etc.* TO HOLD the same unto the Purchaser in fee simple.

2. THE Liquidator hereby covenants with the Purchaser that he has not executed or done or knowingly suffered or been party or privy to any deed or thing whereby or by means whereof the premises hereby conveyed or any part thereof has or may be charged or incumbered in any manner whatsoever or by means whereof the Company is in any wise hindered Covenant by liquidator.

(*b*) In the absence of any contrary provision in the contract of sale (and it does not appear why any such should be inserted) the company should convey as "beneficial owner."

from conveying in the manner aforesaid the premises hereby conveyed or any part thereof.

Acknowledgment for production.

3. THE Company (*c*) hereby acknowledges the right of the Purchaser to production of the documents mentioned in the Schedule hereto (possession of which is retained by the Company) and to delivery of copies thereof and hereby undertakes with the Purchaser for the safe custody thereof.

4. [*Insert statement as to value if required.*]

IN WITNESS, *etc.*

SCHEDULE

[*To contain particulars of documents of title retained by the Company.*]

(*c*) The acknowledgment for production should be given by the company, the liquidator not joining.

Form 19

Sale of Part of Premises Comprised in a Lease.

I. SALE BY WAY OF UNDERLEASE AT A PREMIUM (*a*).

THIS UNDERLEASE is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Landlord" which expression shall when the context so admits include the estate owner or estate owners for the time being of the reversion of the premises hereby demised expectant on the term hereby granted) of the one part and B of *etc.* (hereinafter called "the Tenant" which expression shall when the context so admits include his executors administrators and assigns) of the other part. Parties.

WHEREAS:— Recitals:

(1) By a Lease (hereinafter called "the Lease") dated the —— day of —— 19— and made BETWEEN E of the one part and D of the other part the property hereby demised was with other property demised to the said D from the —— day of —— 19— for the term of —— years at the yearly rent of £X and subject to the covenants on the part of the Lessee and the conditions therein contained headlease;

(2) By virtue of divers mesne assurances acts in the law and events and ultimately by an Assignment dated the —— day of —— 19— and made BETWEEN E of the one part and the Landlord of the other part the premises comprised in the Lease have become vested in the Landlord for all the residue of the said term of —— years granted by the Lease assignment to landlord;

(3) The Landlord has agreed with the Tenant for the sale to him for the sum of £Y of the property hereby demised (being part of the premises comprised in the Lease) and it has been agreed that such sale should be carried out by such an Underlease as is hereinafter granted and that the rent reserved by the Lease should be apportioned as to £Y to the premises hereby demised. agreement to sell by way of underlease.

(*a*) This is usually the best method to adopt, the lease being assigned to the purchaser of the other part with the benefit of the underlease.

NOW THIS DEED WITNESSETH as follows:—

Demise. 1. IN pursuance of the said agreement and in consideration as well of the sum of £Y now paid by the Tenant to the Landlord (the receipt whereof is hereby acknowledged) as also of the rents covenants and conditions hereinafter reserved and contained the Landlord hereby demises unto the Tenant

Parcels. ALL THAT, *etc.*

[subject to the reservations contained in the Lease and except and reserving to the Landlord the right of support for the buildings on the premises comprised in the Lease and not hereby demised as heretofore enjoyed]

Habendum. TO HOLD the same unto the Tenant for all the residue now unexpired of the said term of —— years granted by the Lease except the last day thereof.

Reddendum. PAYING therefor during the said term the yearly rent of £Z by equal quarterly payments on the usual quarter days in each year (*b*) the first payment to be made on the —— day of —— next.

Covenant by tenant to perform covenants in headlease. 2. THE Tenant hereby covenants with the Landlord that he will during the continuance of the term hereby granted pay the said yearly rent of £Z hereinbefore reserved and made payable at the times and in the manner at and in which the same is hereinbefore reserved and made payable and will at all times during the said term duly perform and observe all the covenants agreements and provisions affecting the premises hereby demised which are contained in the Lease and on the part of the Lessee thereunder to be performed and observed (except the covenant for payment of rent) and will not at any time do omit or suffer anything whereby the Lease may be avoided or forfeited And will at all times keep indemnified the Landlord against all actions proceedings costs damages claims demands and liability for or in respect of any breach which may be committed during the said term of any of the said covenants agreements and provisions except as aforesaid.

Covenant by landlord to perform covenants in headlease as regards land retained. 3. THE Landlord hereby covenants with the Tenant that he will during the continuance of the term hereby granted henceforth

(*b*) The times of payment should correspond with those in the lease.

duly pay the said rent reserved by and perform and observe all the covenants agreements and provisions contained in the Lease so far as the same affect the premises comprised therein and not hereby demised (*c*).

Proviso for re-entry.

4. PROVIDED always that if the rent hereby reserved or any part thereof shall at any time be in arrear and unpaid for twenty-one days after the same shall have become due (whether any formal or legal demand for the same shall have been made or not) or if the Tenant shall at any time fail or neglect to perform or observe any of the covenants on the part of the Tenant herein contained the Landlord may re-enter upon the premises hereby demised or any part thereof in the name of the whole and the said premises peaceably hold and enjoy thenceforth as if these presents had not been made without prejudice to any right of action or remedy of the Landlord in respect of any antecedent breach of any of the covenants by the Tenant hereinbefore contained.

Covenant for quiet enjoyment.

5. THE Landlord hereby covenants with the Tenant that the Tenant paying the rent hereby reserved and performing and observing the several covenants conditions and agreements herein contained and on his part to be performed and observed shall and may peaceably and quietly hold and enjoy the said premises hereby demised during the term hereby granted without any lawful interruption or disturbance from or by the Landlord or any person or persons claiming under or in trust for him.

6. [Acknowledgment for production of Lease.]

7. [Certificate of value.]

IN WITNESS, *etc.*

II. ASSIGNMENT BY EXECUTORS OF PART OF THE PROPERTY COMPRISED IN A LEASE (*a*).

Parties.

THIS ASSIGNMENT is made the —— day of —— 19— BETWEEN A of *etc.* and B of *etc.* (hereinafter called "the Vendors") of the

(*c*) Alternatively the covenant for quiet enjoyment may be extended so as to cover any breach by the landlord or any other person of the covenants in the headlease.

(*a*) Executors have power to sell all or any part of the premises comprised in a lease. They can do this either by assignment or underlease: *Re Judd & Poland* [1906] 1 Ch. 684. When the whole is being sold together

one part and C of *etc.* (hereinafter called "the Purchaser") of the other part.

Recitals:

WHEREAS:—

lease;

(1) By a Lease (hereinafter called "the Lease") dated the —— day of —— 19— and made BETWEEN D of the one part and E of the other part the property hereby assigned was (with other property) demised to the said E from the —— day of —— 19— for the term of —— years at the yearly rent of £X and subject to the covenants on the part of the Lessee and the conditions therein contained

assignment to testator;

(2) [Recite assignment to F]

death of testator and probate of his will;

(3) The said F (hereinafter called "the Testator") died on the —— day of —— 19— having by his will dated the —— day of —— 19— appointed the Vendors as executors thereof who duly proved and registered the same in the —— Probate Registry on the —— day of —— 19—

agreement for sale;

(4) The Vendors have agreed with the Purchaser for the sale to him for the sum of £Y of the property hereinafter assured (being part of the premises comprised in the Lease)

apportionment of rent.

(5) Upon the treaty for the said sale it was agreed that the said rent of £X should be apportioned as follows namely the yearly rent of £Z should as from the date hereof [the —— day of ——] be charged exclusively upon and be payable out of the property hereinafter assured in exoneration of the residue of the premises comprised in the Lease and the yearly sum of £A (the balance of the said rent of £X) should be charged upon and payable out of the residue of the said premises in exoneration of the property hereinafter assured.

Assignment.

NOW THIS DEED WITNESSETH as follows:—

---

in lots they can sell on the usual conditions of sale providing for the assignment of the lease to the largest purchaser and the grant of underleases by him to the others; or on conditions providing for the grant of the underleases by themselves. But if part of the premises only is being sold and the rest retained it appears to be safer for the sale to be carried out by assignment, as the onus would be on the purchaser to support the executors' powers to grant an underlease. The executors should obtain a covenant of indemnity from the beneficiary entitled against their personal liability, if they have entered; or retain a fund to answer their liability if they distribute the rest of the estate. If the lease prohibits the assignment of part of the premises without licence, the licence should be recited.

1. IN pursuance of the said agreement and in consideration of the sum of £Y on or before the execution hereof paid by the Purchaser to the Vendors as such personal representatives as aforesaid (the receipt and payment whereof the Vendors hereby acknowledge) the Vendors AS PERSONAL REPRESENTATIVES of the Testator hereby assign unto the Purchaser

ALL THAT, *etc.* Parcels.

TOGETHER with such right of support for the buildings thereon as is at present enjoyed (but not so as to render the Vendors liable for subsidence due to natural causes) and all other easements quasi-easements rights and privileges now or heretofore occupied or enjoyed therewith or which would be implied against the Vendors on severance except rights of light air or otherwise which would restrict or interfere with the free use of the adjoining land of the Vendors for building or other purposes]

EXCEPT AND RESERVING unto the Vendors and their successors in title owners and occupiers of the premises comprised in the Lease and retained by them all easements quasi-easements rights and privileges now or heretofore occupied or enjoyed with the said retained premises over or in relation to the premises hereby assured.

TO HOLD unto the Purchaser for all the residue now unexpired of the said term of —— years granted by the Lease subject henceforth [as from the —— day of ——] to the said yearly apportioned rent of £Z and to the covenants by the Lessee (other than the covenant for payment of the said entire rent of £X) and conditions therein contained and henceforth to be performed and observed in respect of the premises hereby assured. Habendum.

2. THE Purchaser hereby charges the premises hereby assured with the payment of all money which may become payable by him under the Covenant on his part implied herein by virtue of section seventy-seven of the Law of Property Act 1925. Charge of apportioned rent and covenants.

3. THE Vendors hereby charge such of the premises comprised in the Lease as remains vested in them with the payment to the Purchaser and his successors in title of all money which Charge by vendors.

may be payable by him or them on account of any omission to pay the said rent hereby apportioned to the said premises retained by the Vendors or any breach of the covenants agreements and conditions in the Lease so far as regards such retained premises and it is hereby declared that no covenant on the part of the Vendors to pay such apportioned rent or observe and perform such covenants agreements and conditions or to indemnify the Purchaser in respect thereof shall be implied herein (*b*).

Declaration of no previous assent.

4. The Vendors hereby declare that they have not made any previous assent or conveyance in regard to the legal estate in the premises comprised in the Lease or any part thereof.

5. [Acknowledgment for the production of Lease.]

6. [Statement as to value.]

In witness, *etc.*

III. Assignment by Executors of the Residue of the Premises Comprised in the Lease.

Parties.

This Assignment is made the —— day of —— 19— between A of *etc.* and B of *etc.* (hereinafter called "the Vendors") of the one part and C of *etc.* (hereinafter called "the Purchaser) of the other part.

Recitals:

Whereas:—

(1) [Lease of entirety to D]

(2) [Assignment to E the Testator]

(3) [Death of Testator and Probate of his will by Vendors as in last Precedent]

assignment by vendors of part of premises;

(4) By an Assignment (hereinafter called "the Assignment") dated the —— day of —— 19— and made between the Vendors of the one part and F of the other part the Vendors assigned to the said F part of the premises comprised in the Lease [together with such rights of support and otherwise as were then enjoyed therewith or would be implied on severance and reserving such rights or quasi-easements as were then enjoyed by the premises retained over or in relation to the premises

(*b*) The executors will probably not be prepared to give the implied covenant under s. 77 of the Law of Property Act, 1925, in regard to the part of the premises retained by them.

assigned] for the residue of the term of —— years granted by the Lease Subject to the yearly rent of £X (being the portion of the rent reserved by the Lease thereby agreed to be apportioned to the part of the premises thereby assigned) and to the covenants by the lessee and conditions in the Lease thenceforth to be performed and observed in respect of the premises thereby assigned And by the Assignment the said F charged the premises assigned to him with the payment of all money which might become payable by him under the covenant on his part implied by virtue of section seventy-seven of the Law of Property Act 1925 and the Vendors charged the premises comprised in the Lease and remaining vested in them with the payment to the said F and his successors in title of all money which might become payable to him or them on account of any omission to pay the rent thereby apportioned to the premises remaining vested in the Vendors or any breach of the covenants agreements and conditions in the Lease so far as regarded such premises and it was thereby further provided that no covenant to pay such apportioned rent or observe and perform such covenants agreements and conditions should be implied on the part of the Vendors

agreement for sale of residue.

(5) THE Vendors have agreed with the Purchaser for the sale to him for the sum of £Y of the property hereinafter assured being the residue of the premises comprised in the Lease and so remaining vested in the Vendors as aforesaid at the apportioned rent of £Z being the residue of the rent reserved by the Lease.

NOW THIS DEED WITNESSETH as follows:—

Assignment.

1. IN pursuance of the said agreement and in consideration of the sum of £Y on or before the execution hereof paid by the Purchaser to the Vendors as such personal representatives as aforesaid (the receipt and payment whereof the Vendors hereby acknowledge) the Vendors AS PERSONAL REPRESENTATIVES of the Testator hereby assign unto the Purchaser

ALL THAT, *etc.*

Parcels.

Together with the rights reserved to the Vendors by the Assignment.

Habendum.

TO HOLD unto the Purchaser for all the residue now unexpired of the said term of —— years granted by the Lease subject

henceforth to the yearly apportioned rent of £Z and to the covenants by the lessee (other than the covenant for payment of the said entire rent) and conditions contained therein and henceforth to be performed and observed in respect of the premises hereby assured and subject to and with the benefit of the provisions in the Assignment for securing the payment of the rents apportioned to and the observance and performance of the covenants and conditions in the Lease in respect of the premises hereby assured and the premises comprised in the Assignment respectively and subject also to the rights of support and otherwise granted by the Assignment to the said F.

Charge of rent and covenants.

2. THE Purchaser hereby charges the premises hereby assured with the payment of all money which may become payable by him under the covenant on his part implied herein by virtue of section seventy-seven of the Law of Property Act 1925.

3. [Declaration of no previous Assent or Conveyance.]

4. [Acknowledgment for production of Lease.] (*a*).

[5. Statement as to value.]

IN WITNESS, *etc.*

IV. ASSIGNMENT OF PART OF PROPERTY COMPRISED IN A LEASE BY A MORTGAGEE IN EXERCISE OF THE STATUTORY POWER OF SALE (*b*).

Parties.

THIS ASSIGNMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor") of the one part and B of *etc.* (hereinafter called "the Purchaser") of the other part.

(*a*) The lease would usually be handed over.

(*b*) Under s. 89 (1) and (6) of the Law of Property Act, 1925 (as amended by the Law of Property (Amendment) Act, 1926), a mortgagee can, where the mortgage is made by sub-demise of part of the land comprised in the lease or by legal charge, sell and convey the head term in that part, even if the rent has not been legally apportioned. As the mortgagee can himself apportion the rent for the purposes of the sale, he can also convey the head term when he is selling part of the property, even if the entirety was mortgaged to him together: see s. 101 (1) (i). It is therefore unnecessary now to resort to any power of attorney or declaration of trust of the head term, as section 89 applies to mortgages made before or after the Act. If the landlord's licence is required to an assignment of part of the premises, this should be recited. An acknowledgment for production of the lease should have been given in the assignment.

WHEREAS:— Recitals:

(1) By a Lease (hereinafter called "the Lease") dated the —— day of —— 19— and made BETWEEN C of the one part and D of the other part the property hereby assigned was (with other property) demised to the said D from the —— day of —— 19— for the term of —— years at the yearly rent of £X and subject to the covenants on the part of the lessee and the conditions therein contained lease;

(2) By an Assignment (hereinafter called "the Assignment") dated the —— day of —— 19— and made BETWEEN the said D of the one part and E of the other part the said D assigned unto the said E the property hereinafter assured (being part of the premises comprised in the Lease) for the residue of the said term granted by the Lease subject to the apportioned yearly rent of £Y and to the covenants by the lessee and conditions in the Lease thenceforth to be observed and performed in respect of the premises thereby assigned And the Assignment included the statutory covenants on the part of the said E and D to pay the rent apportioned to and to observe and perform the covenants and conditions in the Lease affecting the premises assigned and retained respectively and the said E and D thereby charged such respective portions with all monies payable under such covenants mortgagor;

(3) By a Legal Charge (hereinafter called "the Legal Charge") dated the —— day of —— 19— and made BETWEEN the said E of the one part and the Vendor of the other part the said F charged the property hereinafter assured by way of legal mortgage with payment to the Vendor of the sum of £A with interest thereon as therein mentioned on a day now past legal charge;

(4) The Vendor has agreed with the Purchaser for the sale to him of the property hereinafter assured for all the residue of the term granted by the Lease at the price of £Z. agreement for sale.

NOW THIS DEED WITNESSETH as follows:—

1. IN pursuance of the said agreement and in consideration of the sum of £Z on or before the execution hereof paid by the Purchaser to the Vendor (the receipt and payment whereof the Vendor hereby acknowledges) the Vendor AS MORTGAGEE in exercise of the power vested in him by virtue of the Legal Charge Assignment.

and the statute in that behalf and of every other power him enabling hereby assigns unto the Purchaser.

Parcels. ALL THAT, *etc.*

Habendum. TO HOLD unto the Purchaser for all the residue now unexpired of the said term of —— years granted by the Lease subject henceforth to the payment of the said yearly apportioned rent of £Y and the performance and observance of the covenants on the part of the lessee and conditions in the Lease contained so far as the same relate to the premises hereby assured together with the benefit of the covenants and charge on the part of the said D implied and contained in the Assignment but free from all right of the equity of redemption and from all claims and demands under the Legal Charge (*b*).

Covenant by purchaser. 2. The covenants on the part of the Purchaser implied by virtue of section seventy-seven of the Law of Property Act, 1925, shall be included herein and the Purchaser hereby charges the premises hereby assured with the payment of all money payable thereunder.

3. [Certificate of value.]

IN WITNESS, *etc.*

Form 20

Conveyance on Sale of a Freehold Dwelling-house subject to a Third Apportioned Rentcharge (*a*).

(*Drafted by J. J. Somerville of Gray's Inn*)

Parties. THIS CONVEYANCE made the —— day of —— 19— BETWEEN

Vendor. W of *etc.* (hereinafter called "the Vendor") of the one part

Purchaser. and B of *etc.* (hereinafter called "the Purchaser") of the other part.

Recitals: WHEREAS:—

seisin subject to a second apportioned yearly rentcharge; (a) The Vendor is seised of the property hereby assured (hereinafter called "the Conveyed Property") together with

(*b*) If the mortgagor, having the term in the whole vested in him, had mortgaged part by legal charge, the purchaser would have had the benefit of his covenants for title as regards the residue of the premises in the lease.

(*a*) Stamp *ad valorem* on the price. The conveyance should be executed in duplicate.

eight other properties under and by virtue of the provisions of a Conveyance dated the —— day of —— 193— (hereinafter called "the Conveyance") made between WMK and CTG (hereinafter called "the Grantors") of the first part the said WMK of the second part and the Vendor of the third part subject to an apportioned perpetual yearly rentcharge of £Y (hereinafter called "the Second Apportioned Rent") thereby reserved and made payable

creation of yearly overriding rentcharge;

(b) The Conveyed Property is situate with the said eight properties Numbered 19 to 35 (inclusive) in B— Street S— (hereinafter called "the Retained Properties") and the Conveyed Property and the Retained Properties are subject to the Second Apportioned Rentcharge of £Y reserved and made payable as aforesaid being part of an overriding perpetual yearly rentcharge of £N (hereinafter called "the Overriding Rent") reserved and made payable by an Indenture (being a Conveyance) dated the —— day of —— 189— (hereinafter called "the Rent Grant") made between TG of the first part WHM and RM of the second part the said WHM of the third part and JG (hereinafter called "the Testator") of the fourth part and to the observance and performance of the restrictive provisions and covenants contained in the Rent Grant and thenceforth to be observed and performed which Overriding Rent was firstly apportioned by a Conveyance dated the —— day of —— 193— (hereinafter called "the S Conveyance") made between the Grantors of the one part and JTS of the other part whereby the properties assured by the S Conveyance were charged with a first apportioned yearly rentcharge of £X and the properties thereafter retained by the Grantors stood charged with an apportioned yearly rentcharge of £R being the residue of the Overriding Rent

first apportionment of overriding rentcharge;

residue of the overriding rentcharge;

sale agreement subject to third apportioned rentcharge.

(c) The Vendor has agreed with the Purchaser for the sale and transfer to him of the fee simple of the Conveyed Property free from incumbrances subject to an apportioned perpetual yearly rentcharge of £Z (hereinafter called "the Third Apportioned Rent") being part of the second Apportioned Rent for the sum of £—

(d) It has also been agreed that this Deed shall contain the provisions herein expressed.

NOW THIS DEED WITNESSETH as follows:—

Conveyance. 1. IN pursuance of the said agreement and in consideration of the sum of £— now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as BENEFICIAL OWNER hereby conveys and grants unto the Purchaser

Parcels. ALL THAT piece or parcel of land situate in and having a frontage to and numbered 23 in B— Street in S— aforesaid TOGETHER with the land forming the site thereof and used and occupied therewith excepting and reserving nevertheless as is excepted and reserved in the Rent Grant

Subject to: TO HOLD the same unto the Purchaser in fee simple subject to:—

restrictive covenants; (1) The restrictive provisions and conditions and the covenants on the part of the Testator (save for payment of the entire Overriding Rent) contained in the Rent Grant so far as the same affect the Conveyed Property and are still subsisting;

grantors' covenants; (2) The covenants by the Grantors and the powers and remedies for the benefit of the Grantee contained in the S Conveyance but with the benefit of the Grantee's covenants and charge therein contained; and

vendor's covenants. (3) The Vendor's covenants (other than for payment of the entire Second Apportioned Rent) and conditions contained in the Conveyance but with the benefit of the Grantor's covenants and charge therein contained.

Charge of property conveyed with third apportioned rentcharge. 2. IT is hereby agreed and declared that as between the Conveyed Property and the Retained Properties the Conveyed Property shall henceforth stand charged with the Third Apportioned Rent (part of the Second Apportioned Rent) in exoneration of the Retained Properties and the Retained Properties shall stand charged with the payment of a perpetual yearly rentcharge of £S the residue of the Second Apportioned Rent in exoneration of the Conveyed Property.

3. DECLARATION of use.

4. IN respect of the Third Apportioned Rent the cross covenants (B) referred to in subsection (1) of section 77 of the Law of Property Act 1925 and the cross powers of entry and distress mentioned in subsection (2) of section 190 of the said Act are herein implied. Implied statutory covenants.

5. (1) THE Purchaser hereby charges the Conveyed Property with the payment of all such moneys (if any) which may become payable under the covenants herein implied. Purchaser's charge.

(2) THE Vendor hereby charges the Retained Properties with the payment of all moneys (if any) which may become payable by her under the covenants herein implied. Vendor's charge.

6. IT is hereby declared that the walls and fences separating the Conveyed Property from the adjoining Retained Properties are party walls and fences and shall be maintained and repaired as such. Party walls and fences.

7. THE Vendor hereby acknowledges the right of the Purchaser to the production of the Conveyance (the possession of which is retained by the Vendor) and to delivery of copies thereof and thereby undertakes for the safe custody thereof. Acknowledgment.

8. THE expressions "Vendor" and "Purchaser" shall where the context so admits include each of their respective successors in title. Interpretation.

9. CERTIFICATE of value.

IN WITNESS, *etc.*

INDEX

TO THE CONVEYANCER, VOLUME 17

ACCOUNTANTS,
co-operation with solicitors, 98
duty to clients, 433

ACCUMULATIONS,
beneficiaries' interests, effect of Law of Property Act, 1925, on, 213
debts, 202
destination of, 241, 280
exceptions from Law of Property Act, 1925, ss. 164–166...202
express trust for accumulation, 205
implied trust for accumulation, 205
infant becoming entitled, 211
life of grantor or settlor, 209
minorities, 210
periods, 209
portions, 203
powers to accumulate, 206
produce of timber and wood, 204
purchase of land, 211
remoteness, 201
repugnancy, 200
restrictions independent of Law of Property Act, 1925, ss. 164–166...200
revenue matters, 214
settlements by companies, 212
Thellusson Case, 199
twenty-one years from death of grantor or settlor, 209

ACKNOWLEDGMENT,
for production, **530, 572, 585**

ADMINISTRATORS,
appropriation of matrimonial home partly in consideration of payment, **526**
failure to apply for grant, 247
mortgage by, to raise widow's share, **528**

ADVANCEMENT,
medical practitioner, 153
resulting trust, 154, 308
satisfaction of portions by, 417

ADVERTISEMENTS,
right to display, 400
town and country planning, 88

AGENCY,
accommodation agencies, 327
commission, 500*t*

AGRICULTURAL HOLDINGS,
action for damages during tenancy, 92
income tax, herd basis, 367
notice to quit, 252, 500*z*
rating and valuation, 331
repairs to fixed equipment, settled land, 404

[*Black figures indicate Precedents.*]

ANNUITY,
conveyance in consideration of, **530, 533**
to widow, to avoid application under Inheritance (Family Provision) Act, 1938, as amended, 540

APPOINTMENT OF NEW TRUSTEES,
of settled share, in place of retiring trustees. other shares having been paid over, **544**

APPORTIONMENT,
assignment of part of property comprised in lease, **576, 579, 581**
conditions of sale, 481
rentcharge, **582**

ASSENT,
declaration of no previous, **529, 578**

ASSIGNMENT,
by executors of part of property comprised in lease, **575**
of residue of property comprised in lease, **578**
by mortgagee of part of property comprised in lease, **580**
covenant as to, **562, 565**
development value, **546**

BAILMENTS,
property stored in locked room of requisitioned house, 239

BANKING,
cheques forged by one of two executors, 172
trust moneys placed by bank trustee on deposit with itself, 86

BANKRUPTCY,
deserted wife's right to remain in matrimonial home, 459

BUILDING BY-LAWS,
dangerous structure, 416
model series, 75

BUILDING LICENCE,
cost of making up roads, 79
gardening work, 150
rent and price control, 1, 437

BURIAL,
liability for tree on grave, 304

CAPITAL AND INCOME,
apportionment on sales cum dividend, 34
gift carrying intermediate income, 275
permanent nature of charity, 418
Thomas Tilling Stock cases, 22
trustees' power to postpone sale, 36

CHARGE,
assignment of leaseholds, **577, 580, 582**
conveyance subject to apportioned rentcharge, **584**

CHARITIES,
animals, 51
cy-près doctrine, 500*v*
hospitals, national health service, 88, 245, 419
non-charitable purpose trust administered in ignorance, 67

CHARITIES—*continued*
non-charitable religious object failing for uncertainty, gift over, 313
permanent nature of charity, applicability of capital and income, 418
police sports, 244
purposes and perpetuities, 53
recreation and amusement, 87, 311
report of Committee, 2
tombs and monuments, 50
trusts for non-charitable purposes, 46

CHURCH,
conveyance to diocesan authority for parochial church council, **566**

COMPANIES,
accumulations, settlements by companies, 212
authority of company's representative, 223
contractual capacity, 217
conveyance by company in liquidation, **569**
existence of company, 217
powers of, 221
right to commence business, 219
shares, valuation, 320

COMPLETION,
interest after completion date, 268
place of, 267

COMPULSORY PURCHASE,
Central Land Board's powers, 187
compensation, price on previous sale, 421
refusal of planning permission, 248
stamp duty on conveyances, 178

CONDITIONS OF SALE
Law Society's new conditions, 179, 260, 334, 435
new national conditions, 480

CONTRACT FOR SALE
construction, force majeure, 173
flats, **507**
lunacy, 101
subject to contract, 238, 500*t*
time of exchange of, 266
unincorporated company, 174
withdrawal and waiver of notice to rescind, 130

CONVEYANCE,
company in liquidation, **569**
development value, **549**
diocesan authority for parochial church council, to, **566**
flat, **508**
in consideration of life annuity charged on land, **530**
secured by settlement, **533**
property available for amenity of flats, **501**
of lunatic, 101, **519, 520**
subject to third apportioned rentcharge, **582**

COPYRIGHT,
income tax, 367

COVENANTS,
by liquidator, **571**
for benefit of children to avoid tax, **521, 523**
for quiet enjoyment, **575**
for title, 407

[*Black figures indicate Precedents.*]

COVENANTS—*continued*
in conveyance of flat, **512**
subject to apportioned rentcharge, **585**
in lease, **560**
of easements, **515**
in mortgage, **529**
in tenancy agreement, **552, 557, 564**
in underlease, **574**

COVENANT, **516**
insurance, **530, 532, 561, 563, 565**
repairs, **517, 532, 552, 557, 561, 563, 564**
to grant leases, **504**
to pay money, in leases, 295
to pay rentcharge, **531, 585**
user of property conveyed to diocesan authority, as to, **567**

DEATH DUTIES,
acceptance of property in satisfaction, 371
direction to pay, whether includes foreign duties, 170

DEFENCE REGULATIONS,
permanent enactment, 332
revocation and continuance, 1

DEPOSIT,
condition as to, 265

DISCOVERY,
disclosure by accountants of clients' affairs, 433

DIVORCE AND MATRIMONIAL CAUSES,
settlement of wife's property, 433

EASEMENTS,
advertisements, display of, 400
change in dominant tenement, 237
contract for lease of, **507**
conveyance of, **505**
lease of, **513**
licence to occupy, 464
light, 238
reservation of, **506, 511, 550, 556**
right of way, 401
change in dominant tenement, 237, 401
effect of stopping-up order, 237, 402
right to place articles on servient tenement, 398

EJUSDEM GENERIS RULE,
application of, 70

ELECTION,
trespass, estoppel, abandonment of claim, 236
withdrawal of notice, 129

EMERGENCY LAWS (MISCELLANEOUS PROVISIONS) ACT, 1953...332

ENTAILED INTEREST,
solicitor's failure to advise disentailment, 80, 171

[*Black figures indicate Precedents.*]

ESTATE DUTY,
cesser of widows' annuity, 542
insurance policy, 166, 168
valuation, shares, 169, 170

ESTOPPEL,
trespass, abandonment of claim, 236, 414

EXECUTORS,
cheque forged by one of two executors, 172
foreign domicile of testator, 500*x*

FAMILY ARRANGEMENT,
deed making provision for widow to avoid application under Inheritance (Family Provision) Act, 1938, as amended, **540**

FAMILY PROVISION,
capital payment, 155
children of first marriage, 321
deed making provision for widow to avoid application to court, **540**
measure of award, 500*w*

FINANCE ACT, 1953...360

FIRE SERVICE,
householders' duty to firemen, 81, 306

FISHERIES,
pollution, 79

FIXTURES,
army hut, 500*v*

FLATS,
contract for sale of, **507**
conveyance of, **508**
of property available for amenity of, **501**
lease at rent less than two thirds rateable value and in consideration of premium, **558**
tenancy agreement, **550, 555**

FORESHORE,
damage to, 500*u*

FRIENDLY SOCIETIES,
corporate trustee, 418

GOODWILL,
predecessor in title, 163
stamp duty on assignment, 6

HIGHWAYS,
new streets, 138, 329
private street works, 500*t*
stopping-up order, effect on private right of way, 237, 402

HOSPITALS,
gifts to endowment of bed, 247
national health service, 88, 245, 419

[*Black figures indicate Precedents.*]

HOTCHPOT,
valuation of life interest, 243

HOUSING,
advances, 19
assistance for improvements, 13
closing orders, 329
date for determining whether works can be executed at reasonable expense, 240
demolition orders, 329
Government policy, 438
improvement grants, 13
liability to repair as between landlord and tenant in absence of express agreement, 472
transfer of council house to sitting tenant, **536**

HOWE v. *DARTMOUTH*, RULE IN,
exclusion of, 37

HUSBAND AND WIFE,
after-acquired property, 310
appropriation of matrimonial home, partly in consideration of payment, **526**
consent maintenance order, 171
licence to remain in matrimonial home, 92, 422, 440
maintenance agreements, Divorce Court jurisdiction, 227
order designed to compel grant of tenancy, 432
ownership of banknotes hidden in matrimonial home, 172
proceeds of sale of house, 320
settlement of wife's property on divorce, 433

INCOME TAX,
anti-nationalisation propaganda, 427
author, lump sum received by, 424
cotton-spinning plant sold at profit, 430
Crown, whether person, 430
deed of covenant for benefit of children, **521, 523**
failure to deduct tax from rent, 166
Finance Act, 1953...360
increase of assessment on appeal, 430
investment company, apportionment of income, 431
lettings, trade in, 428
maintenance payments by divorced husband living abroad, 429
pension scheme, 164
relief for losses, 431
remuneration of trustee, 431
sale of ships, 165
settlement, power to revoke, 426
tax reserve certificates, 425

INSURANCE,
covenants as to, **516, 530, 532, 561, 563, 565**

LACHES,
setting aside sale of land, 149

LAND CHARGES,
conditions of sale, 260, 271, 480
exchange of contract before searches, 260, 435, 480
inquiries, 97, 178, 349
licences, 464
registered land, 122
vacation of registration of estate contract, 306

LAND TAX,
condition as to redemption of, 271

LANDLORD AND TENANT,
agreement for first letting at a progressive rent, **550**
letting of furnished house, **564**
shared accommodation, **555**
cutting off gas and electricity, 251
goodwill, predecessors in title, 163, 252
Government policy, 3, 99
Leasehold Property Act and Long Leases (Scotland) Act Extension Act, 1953...180
rating and valuation, 330
renewal of tenancies, 180
non-compliance with forms, 163
shops, 90
tenancy at will, 424
repairs, liability in absence of express agreement, 472
weekly tenants, 500*x*
withdrawal and waiver of notices, 124

LAW REPORTS,
Weekly Law Reports, 439

LEASES,
binding effect of covenants in, for payment of sums of money, 295
covenant to grant, **504**
easements, of, on sale of flat, **514**
underlease at a premium, **573**
flat, of, at rent less than two-thirds rateable value and in consideration of premium, **558**

LICENCE,
as interest in land, 457
contractual licence, 440
third parties, 446
deserted mistress, 250
deserted wife, 449
rights against husband's landlord, 453
rights against husband's successors in title, 459
undeserted wife, 468
employee living in flat, 89
husbands, children and cousins, 469
matrimonial home, 92, 422, 440
notice and registration, 464
personal privilege and rent restriction, 443
purchaser going into possession, 267

LIFT,
covenant to maintain, **517**

LITERARY INSTITUTIONS,
dissolution, 238

LOANS,
housing, 19

LOCAL GOVERNMENT,
dustbins, 328
Local Government (Miscellaneous Provisions) Act, 1953...328

LONDON BUILDING ACTS,
dangerous structure notice, 416

[*Black figures indicate Precedents.*]

LUNACY,
conveyance on sale of land or house property, **519, 520**
sales of land and house property, 101

MAINTENANCE,
agreements, Divorce Court jurisdiction, 227
consent order, 171
income tax on payments from abroad, 429
order designed to compel grant of tenancy, 432
trustees' powers of, 273

MEDICAL PRACTITIONERS,
advancement clause, 153

MINERALS,
town and country planning, 187, 188

MISTAKE,
sale of goods, 433

MORTGAGES,
by administrators to raise widow's share, **528**
costs, 305, 325
leasehold, fatal accident to mortgagor, 151
notice required by attornment clause, 149
registered land, tenant in possession, 235

NAME AND ARMS CLAUSE,
direction to take wife's surname, 81

NATIONAL HEALTH SERVICE,
hospital, gifts to, 88, 245, 419

NEGLIGENCE,
householder's duty to firemen, 81, 306
licensee, 414
solicitors, examination of title, 407
solicitors, failure to advise disentailment, 80, 171

NEW STREETS,
New Streets Act, 1951...138, 329

NOTICE TO QUIT,
agricultural holdings, 252, 500z
rent tribunals, 195
withdrawal and waiver of, 124

NUISANCE,
covenant not to create, **552, 557**

OPTION,
to renew lease at rent varying with value of £...437

PARTY WALLS,
declaration as to, **585**

PERPETUITIES,
inalienability, 57
trusts for non-charitable purposes, 53

[*Black figures indicate Precedents.*]

PESTS,
destruction of rats, 151

PETROLEUM,
reservation of, 148

PORTIONS,
satisfaction by advancement, 417

POWER OF APPOINTMENT,
fraud on a power, 151, 416
hotchpot, valuation of life interest, 243

PRESCRIPTION,
interruption, 78
right of way, 237

PROFIT À PRENDRE,
prescription, interruption, 78

PROFITS TAX AND EXCESS PROFITS LEVY,
directors' remuneration, 432
iron and steel companies, 370
loan to member of company, 253
post-war refunds, 372
reduction of capital, 254

PUBLIC HEALTH,
drainage of trade premises, 150
dustbins, 328

QUIET ENJOYMENT,
covenant for, **518, 553, 557, 563**

RATING AND VALUATION,
covenant to pay rates, **560**
Valuation for Rating Act, 1953...329

RATS,
destruction of, by occupier, 151

RECEIVER,
by way of equitable execution, 153
conveyance of property of lunatic, 101, **519, 529**

RECITALS,
administration of estate, **545**
agreement for lease at premium, **559**
for lease of easements on sale of flat, 514
for loan, **529**
for sale, **509, 531, 533, 567, 571**
for sale by way of underlease, **573**
for sale in consideration of shares in company, **503**
for sale of part of premises comprised in lease, **576, 579, 581**
for sale subject to rentcharge, **583**
to appropriate, **527**
apportionment of rent, **576**
assignment to landlord, **573, 578, 581**
consent of diocesan authority, **567**
conversion into flats, **502, 509**
conveyance of servient land, **509**
on trust for sale, **534**

[*Black figures indicate Precedents.*]

RECITALS—*continued*
covenants to be entered into, **509**
death and probate, **541, 545**
of husband intestate, **527, 528**
declaration of solvency, **570**
desire of trustees to retire and appoint new trustees, **545**
diocesan authority, **567**
gift, **567**
incorporation of company, **503**
investments representing settled share, **545**
lease, **573, 576, 581**
legal charge, **581**
lunacy orders, **519, 520**
next-of-kin, **527**
no application under Inheritance (Family Provision) Act, 1938, as amended, **541**
order for winding up, **571**
payment of debts, **527**
payment over of shares, **545**
rating assessment, **558**
rentcharge, **583**
resolution to wind up, **570**
seisin, **502, 508, 519, 531, 533, 567, 570**
seisin subject to apportioned rentcharge, **582**
state of family, **541**
transfer of investments, **546**
widow's rights, **527**
will, **540, 544, 576**

RE-ENTRY,
proviso for, **516, 562, 575**
withdrawal and waiver of notices, 127

REGISTERED LAND,
cautions, 107
compulsory registration, Oxford, 259
conclusiveness of registered titles, 39
covenant against registration, **529**
inhibitions, 117
land charges, 122
mortgage, tenant in possession, 235
notices, 118
practice on first registration, 179, 326
registration of leases, 179
report, 1952–1953...257
restrictions, 114
rights of third parties, 105
solicitors' remuneration, 11
transfer of council house to sitting tenant, **536**

RENT RESTRICTION,
alternative accommodation, order for possession conditional on grant of, 161
sharing, 423
assignment by subtenant with consent of tenant but not of superior landlord, 249
closing order, 319
declaration as to statutory tenancy, 317
deduction of overpayments from future payments, 91
deserted mistress left in house, 250
furnished house, security of tenure, 315
landlord by purchase, 91, 422
lease of flat to evade, **558**

[*Black figures indicate Precedents.*]

RENT RESTRICTION—*continued*
licence, personal privilege, 443
matrimonial home, 422, 443, 453
member of family, competing claims, 317
mistress, 423
rent reduced by tribunal, option for new lease, 162, 316
rent tribunal, change of circumstances, 197, 251
control by High Court, 189
decisions and appeals, 189
in rem, 196
determination of collateral matters, 193
going behind the contract, 192
notice to quit, 195
onus of proof, 194
premiums, 198, 500*y*
procedure, 194
security of tenure, 315
withdrawal of application, 195
repairs, liability in absence of express agreement, 473
statutory tenant vacating without notice, 159
suspended order, 318
tenant with two homes, 161
war-damaged house, 319

RENTCHARGES,
abstract of title to, 270
conveyance in consideration of, **530**
subject to third, **582**

REPAIRS,
covenant as to, **517, 532, 552, 557, 561, 563, 564**
liability as between landlord and tenant in absence of express agreement, 472
weekly tenant, 500*x*

REQUISITIONING,
duration, trespass by owner, 415
property stored in locked room, 239

RESCISSION,
condition as to, 269

RESERVE PRICE,
condition as to, 265

RESULTING TRUST,
advancement, 154, 308

RIGHT OF WAY,
change in dominant tenement, 237, 401
easements, 401
right to halt, 413
stopping-up order, 237, 402

ROYALTIES,
rents, certainty, 239

SALE OF GOODS,
mistake, 433

SETTLEMENT,
after-acquired property, 310
agricultural holdings, repairs to fixed equipment, 404

[*Black figures indicate Precedents.*]

SETTLEMENT—*continued*
improvements, repairs, 242
income tax, power of revocation, 426
portions, advancement, 417
power to distribute to fluctuating and unascertainable class, 240
proceeds of sale of freeholds sold in consideration of life annuity, **534**
provision preventing tenant for life from exercising statutory powers, 85, 307
scheme of re-arrangement, 81
Thomas Tilling Stock cases, 22

SEWERAGE,
drainage of trade premises, 150

SHARES,
contract to transfer, **508**

SHOPS,
renewal of tenancies, 90

SLANDER OF TITLE,
malice, absence of, declaration of title, 239

SOLICITORS,
accountants, co-operation with, 98
negligence, examination of title, 407
failure to advise disentailment, 80, 171
remuneration, 8, 100

STAMP DUTIES,
adjudication, 395
agreements, 491, 500*m*
for sale of business, 4
amalgamations, 500*f*
annuities, 500*l*
appeals, 396
appointments, 499
appropriation of matrimonial home partly in consideration of payment, 527
assents, 500*f*
bond and covenant, 497
certificate of value, **568**
charities, 166, 432
cheques, 488
consideration, 500*g*
in kind, 393
contingent unascertained consideration, 388
conveyance, 495, 500*b*
in consideration of life annuity charged on land, 532
of land compulsorily acquired, 178
declaration of trust, 500*a*, 500*g*
deed, 494
of covenant for benefit of children to avoid tax, 521, 523
of family arrangement making provision for widow to avoid application under Inheritance (Family Provision) Act, 1938, as amended, 543
denoting stamps, 395
documents, on, 374
double operation of instrument, 389
exchange and partition, 497
exemptions and reduced rates, 500*o*
failure to stamp, 382
family arrangements, 500*f*
Finance Act, 1953...372
fines, 384
fixed duties, 488
foreclosure orders, 500*d*

[*Black figures indicate Precedents.*]

STAMP DUTIES—*continued*
foreign documents, 381
property, 500*m*
general principles, 373
goods, 500*k*
impressed and adhesive stamps, 377
instruments answering more than one description, 392
letter or power of attorney, 498
lost, spoiled and wasted stamps and stamped instruments, 394
mortgages, 500*l*
partnership agreements, 500*d*
proof of title, 386
receipts, 488, 500*e*
recovery by action, 387
release and renunciation, 500
single transaction effected by more than one instrument, 392
stock and marketable securities, 500*k*
time for stamping, 378
unstamped documents not admissible in evidence, 382

SUPPORT,
change of cause of action, 415

SURTAX,
distribution of company's income, 165, 431

TENANCY AT WILL,
liability to repair in absence of express agreement, 475
termination of, 424

TENANCY IN COMMON,
received by way of equitable executor, 153

TITHE,
highway authority, 500*s*

TOWN AND COUNTRY PLANNING,
abolition of development charge, 185
advertisements, 88
assignment of development value, **546**
claims on the global sum, 186
compulsory acquisition by Central Land Board, 187
enforcement notice, 159, 248, 421
minerals, 187, 188
purchase notice, 248
revocation of planning permission, compensation for abortive expenditure, 249
Town and Country Planning Act, 1953...185
unfinished buildings, development charge, 249

TREES,
liability for tree on grave, 304

TRESPASS,
estoppel, election to abandon claim, 236, 414
requisition, duration, 415

TRUST,
non-charitable purposes, 46
trust for sale or trust to retain or sell, 177

TRUSTEE,
appointment of new, of settled share, other shares having been paid over **544**
costs, 439
costs of litigation to secure personal rights of trustee, 309

[*Black figures indicate Precedents.*]

TRUSTEE—*continued*
limitation on discretionary powers of, 285
money placed by bank on deposit with itself, 86
power of maintenance, 273
of trustees for sale to invest in land, 134
to postpone sale, 311
remuneration of corporate administrator, 87

UNDUE INFLUENCE,
relationship of parties, 417

VENDOR AND PURCHASER,
discharge of debt conditional on transfer of land, 305
lunacy, 101
setting aside sale of land, 149

WAIVER,
notices, 124

WATER,
covenant to supply, **553**, **557**
pay rates, **517**
pollution, 79

WILLS,
absolute gift or life interest, 156
ademption, 500*x*
children, adopted children, 500*w*
illegitimate children, 419
class gift, 157
condition as to religion, 157, 420
not to have social or other relationships with person, 157
employment of wife, 156
endowment of bed in hospital, 247
failure of gift over on first gift, 314
lapse, deemed survival, 158
latent ambiguity, 246
legacy to wife, marriage invalid, 247
legatees taking residue, 247
movables, 246
oral evidence of existence and contents of will, 246
revocation, will made in contemplation of marriage, 245
signature, 248
testator's recognition of document, 88

[*Black figures indicate Precedents.*]

Printed in Great Britain by The Eastern Press, Ltd., London and Reading.

THE CONVEYANCER
AND
PROPERTY LAWYER

EDITORS
DONALD C. L. CREE, M.A. *and* EDWARD F. GEORGE, LL.B.
of Lincoln's Inn, Barrister-at-Law. *Solicitor of the Supreme Court.*

VOL. 17, No. 1 JANUARY—FEBRUARY, 1953

ARTICLES, ETC.

CONVEYANCER'S NOTEBOOK 1
SOLICITORS' REMUNERATION IN NON-CONTENTIOUS BUSINESS ... 8
ASSISTANCE FOR IMPROVEMENTS. By J. F. GARNER 13
THE THOMAS TILLING STOCK CASES. By ANTHONY J. BLAND ... 22
THE CONCLUSIVENESS OF REGISTERED TITLES. By THEODORE B. F. RUOFF 39
TRUSTS FOR NON-CHARITABLE PURPOSES. By L. A. SHERIDAN 46
NOTES ON THE EJUSDEM GENERIS RULE. By J. F. MACKESON 70
A NOTE ON THE NEW BUILDING BY-LAWS. By J. F. GARNER 75
NOTES OF RECENT CASES (*For list see overleaf*) 78
THE LIBRARY 93

PRECEDENTS

Scheme for Disposing of Flats as Freeholds

I. Conveyance by Owner who has Converted Property into Flats of Certain Parts of Property to Company which Enters into Covenants Designed to Ensure that these Parts will be Available for Amenity and Enjoyment of Owners of Flats 501

II. Provisions to be Inserted in Contract of Sale of Flat which is Sold in Execution of Transaction Contemplated in Form I 507

III. Conveyance of Flat to be Executed as Part of Transaction Contemplated in Form I 508

IV. Lease of Easements to be Executed as Part of Transaction Contemplated in Form I 513

SWEET & MAXWELL LIMITED
2 & 3 CHANCERY LANE, LONDON W.C.2

Net 10s. Annual Subscription £1 15s.

LIST OF CASES NOTED

1. *Law of Property and Conveyancing*

Davies *v.* Du Paver, 78
Kersey, *Re*, 81
Merrington *v.* Iron Bridge Metal Works, 81
Otter *v.* Church, Adams, Tatham & Co., 80
Pride of Derby, etc. *v.* British Celanese, 79
Smith *v.* Jones, 79

2. *Trusts*

Aberconway's Sett. Trusts, *Re*, 85
Blackwell's Sett. Trusts, *Re*, 81
Chapman's Sett. Estates, *Re*, 81
Downshire Sett. Estates, *Re*, 81
Masters, *Re*, 87
Waterman's Will Trusts, *Re*, 86

3. *Charities*

Baddeley *v.* I. R. C., 87
Buzzacott, *Re*, 88

4. *Wills*

Wallace, *Re*, 88

5. *Planning*

Dominant Sites *v.* Hendon Corp., 88

6. *Landlord and Tenant*

Bradley-Hole *v.* Cusen, 91
Frawley (M. & F.), Ltd. *v.* Ve-Ri-Best, Ltd., 90
Kent *v.* Conniff, 92
Murray, Bull & Co., Ltd. *v.* Murray, 89
Newton *v.* Biggs, 91

7. *Miscellaneous*

Vaughan *v.* Vaughan, 92

EDITORIAL NOTE

Subscribers and Others are invited to submit for consideration by the Editor of the Journal articles or letters on matters of interest to the profession. Any useful or unusual precedents will also be welcome for publication in the Supplement. They should be sent to THE EDITOR, THE CONVEYANCER AND PROPERTY LAWYER, 3 CHANCERY LANE, LONDON W.C.2.

CONTRIBUTIONS *or* MS. *forwarded for insertion in the publication must be sent at the sender's risk; every attempt will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect. The views expressed by contributors are not necessarily those of the Editors, who can neither accept responsibility for the accuracy of statements appearing in the publication nor undertake themselves to reply to queries. Unsigned contributions are not necessarily of editorial authorship.*

Books for Review should be sent to the Publishing Office at 3 CHANCERY LANE, LONDON W.C.2.

*Revised * Rearranged * Incomparably Improved*

WILLIAMS
on
EXECUTORS and ADMINISTRATORS

Thirteenth Edition

By Sir David Hughes Parry and D. C. Potter
Barristers-at-Law

The new *Williams* has been long awaited. Its preparation started in 1937 but the War interrupted progress, and it is only now that the second revision could be completed.

This double revision has resulted in an incomparably improved *Williams*. The delay has allowed time for a thorough overhaul and a drastic pruning of the whole work. To give some instances: the first 130 pages of the twelfth edition dealing with the Origin and Nature of Wills have gone; the section on Estate Duty has been reduced; and much obsolete matter concerning pre-1926 law and practice, legacy and succession duties and married women has been cut.

On the other hand, a vast amount of new matter has been added by the Editors. Much of the text has been rewritten, notably the chapters on Gifts for Charitable Purposes, Legacies and Devises void for Perpetuity, Tax and Duties on Legacies, Abatement and the Limitation Act. There is a new chapter on the Inheritance (Family Provision) Act, 1938, and the text of the new Intestates' Estates Act, 1952, has been included. The law is generally stated as at August 1, 1952.

The appearance of the whole work has been greatly improved and the new edition conforms to the best modern publishing practice. *Williams* has been transformed into a modern textbook stating the law with the utmost clarity. The profession will undoubtedly appreciate the result of the herculean labours of the two Editors.

Two Volumes. Net £8 8s. Postage 2s.

CHANCERY LANE, LONDON, W.C.2 :: Telephone: CHA. 5462

A STEVENS *Publication*

A.D. 1720.

ROYAL EXCHANGE
ASSURANCE

MEMBERS OF THE LEGAL PROFESSION WHO SELECT THE ROYAL EXCHANGE FOR THEIR INSURANCE NEEDS WILL FIND AN ENDURING ASSOCIATION BONDED IN COMPLETE CONFIDENCE

*

Newly admitted solicitors are particularly invited to apply for agency terms to the Head Office of the Corporation at

ROYAL EXCHANGE
LONDON, E.C.3.

Printed in Great Britain by The Eastern Press, Ltd., London and Reading.

UNIVERSITY OF LOND
5 MAR 1953